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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Real Estate Appraiser Examining Board[193F]

- Replace Analysis
- Replace Chapter 1
- Replace Chapter 3
- Replace Chapters 5 and 6
- Replace Chapters 8 and 9
- Replace Chapter 11
- Remove Chapters 16 and 17
- Insert Chapters 16 to 25

Utilities Division[199]

- Replace Chapter 10
- Replace Chapter 19

Economic Development Authority[261]

- Replace Chapter 72

College Student Aid Commission[283]

- Replace Analysis
- Replace Chapter 1
- Replace Chapter 34 with Reserved Chapter 34

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CHAPTER 1 ORGANIZATION AND ADMINISTRATION

[Prior to 2/20/02, see 193F—Chapters 2, 9 and 11]

193F—1.1(543D) Description.

1.1(1) The purpose of the real estate appraiser examining board is to administer and enforce the provisions of Iowa Code chapter 543D (Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989) with regard to the appraisal of real property in the state of Iowa, including the examination of candidates and issuance of certificates and registrations; investigation of alleged violations and infractions of the appraisal standards and appraiser certification law; and the disciplining of appraisers. The importance of the role of the appraiser places ethical and professional standards on those who serve in this capacity. To this end, the board has promulgated these rules and has adopted the Uniform Standards of Professional Appraisal Practice (USPAP) to clarify the board's intent and procedures and to promote and maintain a high level of public trust in professional appraisal practice.

1.1(2) All official communications, including submissions and requests, should be addressed to the board at its official address, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

1.1(3) All board action under Iowa Code chapter 543D and 193F—Chapter 17 shall be taken under the supervision of the superintendent, as provided in Iowa Code section 543D.23 and the implementing rules set forth herein.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—1.2(543D) Administrative authority.

1.2(1) The superintendent is vested with authority to review, approve, modify, or reject all board action pursuant to Iowa Code chapter 543D and 193F—Chapter 17. The superintendent may exercise all authority conferred upon the board and shall have access to all records and information to which the board has access. In supervising the board, the superintendent shall independently evaluate the substantive merits of recommended or proposed board actions which may be anticompetitive.

1.2(2) In performing its duties and in exercising its authority under Iowa Code chapter 543D and 193F—Chapter 17, the board may take action without preclearance by the superintendent if the action is ministerial or nondiscretionary. As used in this chapter, “ministerial or nondiscretionary” shall include any action expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. The board may, for example, grant or deny an application for initial or reciprocal certification as a real estate appraiser, an application for registration as an associate real estate appraiser, or an application for a temporary practice permit by an out-of-state appraiser, on any ground expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

1.2(3) Prior to taking discretionary action under Iowa Code chapter 543D and 193F—Chapter 17, the board shall secure approval of the superintendent if the proposed action is or may be anticompetitive, as provided in 193F—Chapter 17. As used in this chapter, “discretionary” shall include any action that is authorized but not expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. Examples of discretionary action include orders in response to petitions for rule making, declaratory orders, or waivers or variances from rules, rule making, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

1.2(4) Determining whether any particular action is or may be anticompetitive is necessarily a fact-based inquiry dependent on a number of factors, including potential impact on the market or restraint of trade. With respect to disciplinary actions, for instance, a proceeding against a single licensee for violating appraisal standards would not have an impact on the broader market and would accordingly not be an anticompetitive action. Commencement of disciplinary proceedings which affect all or a substantial subset of appraisers may have a significant market impact. When in doubt as to whether a proposed discretionary action is or may be anticompetitive, the board may submit the proposed action through the preclearance procedures outlined in 193F—Chapter 17.

1.2(5) A person aggrieved by any final action of the board taken under Iowa Code chapter 543D or 193F—Chapter 17 may appeal that action to the superintendent within 20 days of the date the board issues the action.

a. The appeal process applies whether the board action at issue was ministerial or nondiscretionary, or discretionary, and whether the proposed action was or was not submitted through a preclearance process before the superintendent.

b. No person aggrieved by a final action of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in 193F—Chapter 17.

c. Final board action which is ministerial or nondiscretionary is immediately effective when issued by the board but is subject to appeal to the superintendent.

d. Records, filings, and requests for public information. Unless otherwise provided by rule of the board, final board action which is discretionary shall be effective upon the expiration of 20 days following issuance of the board's action if not timely reviewed by or appealed to the superintendent or upon final action by the superintendent if timely reviewed or appealed.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—1.3(543D) Annual meeting. The annual meeting of the board shall be the first meeting scheduled after April 30. At this time, the chairperson and vice chairperson shall be elected to serve until their successors are elected.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.4(543D) Other meetings. In addition to the annual meeting, and in addition to other meetings, the time and place of which may be fixed by resolution of the board, any meeting may be called by the chairperson of the board or by joint call of a majority of its members.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.5(543D) Executive officer's duties.

1.5(1) The executive officer shall cause complete records to be kept of applications for examination and registration, certificates and permits granted, and all necessary information in regard thereto.

1.5(2) The executive officer shall determine when the legal requirements for certification and registration have been satisfied with regard to issuance of certificates or registrations, and the executive officer shall submit to the board any questionable application.

1.5(3) The executive officer shall keep accurate minutes of the meetings of the board. The executive officer shall keep a list of the names of persons issued certificates as certified general real property appraisers, certified residential real property appraisers and associate real property appraisers.

193F—1.6(543D) Records, filings, and requests for public information. Unless otherwise specified by the rules of the department of commerce, the board is the principal custodian of its own agency orders, statements of law or policy issued by the board, legal documents, and other public documents on file with the board.

1.6(1) Any person may examine public records promulgated or maintained by the board at its office during regular business hours as specified in 193F—Chapter 25.

1.6(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the law and rules may be reviewed or obtained anytime by the public from the board's Internet website located at idob.state.ia.us/reap.

1.6(3) Deadlines. Unless the context requires otherwise, any deadline for filing a document shall be extended to the next working day when the deadline falls on a Saturday, Sunday, or official state holiday.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—1.7(543D) Adoption, amendment or repeal of administrative rules.

1.7(1) The board shall adopt, amend or repeal its administrative rules in accordance with the provisions of Iowa Code section 17A.4. Prior to the adoption, amendment or repeal of any rule of the board, any interested person, as described in Iowa Code section 17A.4(1) "b," may submit any data, views, or arguments in writing concerning such rule or may request to make an oral presentation

concerning such rule. Such written comments or requests to make oral presentations shall be filed with the board at its official address and shall clearly state:

a. The name, address, and telephone number of the person or agency authoring the comment or request;

b. The number and title of the proposed rule, which is the subject of the comment or request as given in the Notice of Intended Action;

c. The general content of the oral presentation. A separate comment or request to make an oral presentation shall be made for each proposed rule to which remarks are to be asserted.

1.7(2) The receipt and acceptance for consideration of written comments and requests to make oral presentations shall be acknowledged by the board.

1.7(3) Written comments received after the deadline set forth in the Notice of Intended Action may be accepted by the board although their consideration is not assured. Requests to make an oral presentation received after the deadline shall not be accepted and shall be returned to the requester.

193F—1.8(22) Public records and fair information practices. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.9(68B) Sales of goods and services. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.10(17A) Petitions for rule making. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.11(17A) Declaratory orders. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.12(252J,261) Denial of issuance or renewal of license for nonpayment of child support or student loan. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.13(17A) Waivers and variances. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.14(543D,17A,272C) Investigations and investigatory subpoenas. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.15(543D,17A,272C) Contested case procedures. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.16(272C) Impaired licensees. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.17(543D) Types of appraiser classifications. There are three types of appraiser classifications:

1. Associate real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 4.

2. Certified residential real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 5.

3. Certified general real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 6.

[**ARC 7774B**, IAB 5/20/09, effective 6/24/09]

193F—1.18(543D) Qualified state appraiser certifying agency.

1.18(1) The real estate appraiser examining board is a state appraiser certifying agency in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). As a result, persons who are issued certificates by the board to practice as certified real estate appraisers are authorized under federal law to perform appraisal services for federally related transactions and are identified as such in the National Registry maintained by the Appraisal Subcommittee (ASC).

1.18(2) The board must adhere to the criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation when registering associate appraisers or certifying certified appraisers under Iowa Code chapter 543D.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.19(543D) May 1, 2018, criteria.

1.19(1) Effective on and after May 1, 2018, the AQB has changed the criteria for eligibility for certification as a certified appraiser. No person may be certified as a certified appraiser on or after May 1, 2018, unless the person is eligible under the most recent criteria.

1.19(2) The May 1, 2018, criteria were adopted by the AQB in 2018 and have been widely disseminated, including on the board's website at: idob.state.ia.us/reap/. The May 1, 2018, criteria modify the conditions under which applicants for certification are eligible to take the required examinations.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—1.20(543D) Application and work product deadlines.

1.20(1) *Summary of registration requirements for registration as an associate.* The associate appraiser and supervisory appraiser provisions are more fully set out in 193F—Chapters 4 and 15, respectively. Before submitting an application for registration with the board, a person seeking registration as an associate appraiser must complete 75 hours of appraisal education and secure a qualified supervisory appraiser. An associate appraiser applicant who submits an application to the board office must have completed all required qualifying education and the supervisory appraiser/associate coursework prior to submitting an application for registration.

1.20(2) *Summary of certification requirements.* As more fully set out in 193F—Chapters 3, 5, and 6, a person who is in the process of completing the education, experience, and examination required for certification as a certified appraiser may not submit an application for certification to the board until all prerequisites have been satisfactorily completed. The prerequisites include the following: qualifying college and core criteria appraiser education, qualifying examination, 2,500 hours of qualifying experience in a minimum of 24 months for residential appraisers or 3,000 hours of qualifying experience in a minimum of 30 months for general appraisers, and work product review. Work product review requires numerous steps, as provided in 193F—5.6(543D) and 193F—6.6(543D). The work product review process includes the applicant's submission of a work product experience log to the board; the board's selection of three appraisals to review; communication of the selected appraisals to the applicant; the applicant's submission of the three appraisals and associated work files to the board in electronic and paper formats; review of the appraisals and work files by a reviewer retained by the board; the reviewer's submission of review reports to the board; a meeting between the applicant and the board's work product review committee; a formal board vote at a board meeting; and communication of approval, denial, or deferral to the applicant. All of these steps must be completed before an applicant with approved work product can submit an application for certification to the board office.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—1.21(543D) National criminal history check. Effective January 1, 2017, all applicants for any of the classifications listed in 193F—1.17(543D) must satisfactorily complete a national criminal history check as provided in Iowa Code section 543D.22 as a condition of registration as an associate real property appraiser or certification as a residential or general real property appraiser. The applicant shall authorize release of the results of the criminal history check to the board. Unless the criminal history check was completed within 180 calendar days prior to the date the license application is received by the board, the board shall reject and return the application to the applicant.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 3084C, IAB 5/24/17, effective 6/28/17]

193F—1.22(272C,543D) Process for board review of eligibility.

1.22(1) Before applying for registration as an associate appraiser or certification as a certified appraiser, a person with a criminal history or other background matters that may impair registration or

certification may request that the board evaluate the prospective applicant's criminal history or other background matters by submitting a written request to the board. Upon receiving such a request, the board may request additional supporting materials.

1.22(2) Requests will be processed under the same standards as applications for registration or certification in order to inform the prospective applicant whether any of the disclosed information is or may be a bar to future registration or certification. In responding to a request, the board shall address only the offenses or matters listed in the request. The board's response will be based upon the laws, rules, and guidelines in effect at the time of the board's response, including the guidelines and policies promulgated by the AQB or ASC.

1.22(3) If the information supplied is not accurate or is incomplete, or if applicable laws, rules, or guidelines change or are impacted by intervening board orders or case law, the board's response shall not be binding on a future board.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

These rules are intended to implement Iowa Code sections 543D.4, 543D.5, 543D.7, 543D.17, 543D.20 and 543D.22 and chapter 272C.

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CHAPTER 3
GENERAL PROVISIONS FOR EXAMINATIONS

193F—3.1(543D) Types of appraiser certificates. Rescinded IAB 5/20/09, effective 6/24/09.

193F—3.2(543D) Examinations. Examinations for certified residential real property appraisers and certified general real property appraisers shall be AQB-endorsed and administered by the board or its authorized representative as often as the board deems necessary, but not less than one time per year.

3.2(1) Disclosure of confidential information. Members of the board shall not disclose a final examination score to any person other than the person who took the examination. Persons who take the examination may consent to the publication of their names on a list of passing candidates.

Other information relating to the examination results, including the specific grades by subject matter, shall be given only to the person who took the examination, except that the board may:

a. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the candidate.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others who have a legitimate interest in the information provided in conjunction with the scores.

3.2(2) The board shall enter into a contractual relationship with a qualified testing service to develop and administer AQB-approved examinations and shall maintain control over the examination process.

3.2(3) and 3.2(4) Rescinded IAB 5/20/09, effective 6/24/09.

3.2(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months of passing the examination, that examination result loses its validity to support the issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading to the certified general classification.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—3.3(543D) Conduct of applicant.

3.3(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from the appraisal certification examinations in Iowa, or be subject to the imposition of other sanctions that the board deems appropriate.

3.3(2) Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

a. Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the examination; aiding by any means in the reproduction or reconstruction of any portion of the examination; selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered examination.

b. Conduct that violates the standard of test administration, such as communicating with any other examination candidate during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the examination; referencing any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

c. Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the examination; impersonating an examination candidate or having an impersonator take the examination on one's behalf.

3.3(3) Any examination candidate who challenges a decision of the board under this rule may request a contested case hearing pursuant to rule 193F—20.39(546,543D,272C). The request for hearing shall

be in writing, shall briefly describe the basis for the challenge, and shall be filed in the board's office within 30 days of the date of the board decision that is being challenged.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—3.4(543D) Application for certification. Applicants for certification must successfully complete the appropriate examination.

3.4(1) All initial applications for certification or associate registration shall be made on forms provided by the board. The board may deny an application as described in Iowa Code sections 543D.12 and 543D.17. Specific examples of grounds for denial include knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation; the revocation of another professional license; or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others. The board may also deny an application based on disciplinary action taken against an associate appraiser registration.

3.4(2) A certificate or associate registration shall contain the applicant's name, appraiser classification, Iowa certificate number and the signature of the board chairperson.

3.4(3) An initial certificate shall not be issued until the applicant has demonstrated compliance with all required appraiser qualifications for certification, which include examination, core criteria, collegiate education, and real property appraiser experience pursuant to Iowa Code section 543D.9 and 193F—Chapter 5 or 6.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—3.5(543D) Work product review. Rescinded IAB 5/20/09, effective 6/24/09.

These rules are intended to implement Iowa Code section 543D.8.

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CHAPTER 5
CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER
[Prior to 2/20/02, see rule 193F—3.4(543D) and 193F—Chapter 4]

193F—5.1(543D) General.

5.1(1) The certified residential real property appraiser classification qualifies the appraiser to appraise one- to four-unit residential properties without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one- to four-unit residential properties or for which the highest and best use is for one- to four-unit residential properties. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

5.1(2) Certification is composed of three parts: education, examination, and experience, which includes work product review.

5.1(3) All certified residential real property appraisers must comply with USPAP.
[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—5.2(543D) Education. Education requirements for an applicant to obtain a certificate as a certified residential real property appraiser shall be in compliance with the criteria as set forth by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. If an accredited college or university (accredited by the Commission on Colleges, by a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education) accepts the College-Level Examination Program® (CLEP) examination(s) and issues a transcript for the examination(s) showing the college's or university's approval, the CLEP credit will be considered as credit for the college course.

5.2(1) Collegiate education. There are five options toward certification as a certified residential real property appraiser. An applicant must meet at least one of the five options identified in paragraphs 5.2(1) "a" through 5.2(1) "e," below, in order to be eligible for certification as a residential real property appraiser.

a. An applicant holds a bachelor's degree in any field of study from an accredited college or university.

b. An applicant holds an associate's degree in a field of study from an accredited college, junior college, community college, or university that relates to:

- (1) Business administration;
- (2) Accounting;
- (3) Finance;
- (4) Economics; or
- (5) Real estate.

c. Successful completion of 30 semester hours of college-level courses from an accredited college, junior college, community college, or university that cover each of the following specific areas and hours:

- (1) English composition (3 hours);
- (2) Microeconomics (3 hours);
- (3) Macroeconomics (3 hours);
- (4) Finance (3 hours);
- (5) Algebra, geometry, or higher math (3 hours);
- (6) Statistics (3 hours);
- (7) Computer science (3 hours);
- (8) Business law or real estate law (3 hours);
- (9) Two electives in any of the above topics or in accounting, geography, agriculture, economics, business management, or real estate (3 hours each).

d. Successful completion of at least 30 semester hours of College-Level Examination Program® (CLEP) examinations that cover each of the following specific areas and hours:

- (1) College algebra (3 semester hours);
- (2) College composition (6 semester hours);

- (3) College composition modular (3 semester hours);
- (4) College mathematics (6 semester hours);
- (5) Principles of macroeconomics (3 semester hours);
- (6) Principles of microeconomics (3 semester hours);
- (7) Introductory business law (3 semester hours); and
- (8) Information systems (3 semester hours).

e. Any combination of paragraphs 5.2(1) “*c*” and 5.2(1) “*d*,” above, that ensures coverage of all of the topics and hours identified in paragraph 5.2(1) “*c*.” For purposes of determining whether coverage of the topics and hours identified in paragraph 5.2(1) “*c*” has occurred:

(1) The college algebra CLEP examination may be considered for satisfying the algebra, geometry, or higher math requirement of paragraph 5.2(1) “*c*.”

(2) The college composition CLEP examination may be considered for satisfying the English composition requirement of paragraph 5.2(1) “*c*.”

(3) The college composition modular CLEP examination may be considered for satisfying the English composition requirement of paragraph 5.2(1) “*c*.”

(4) The college mathematics CLEP examination may be considered for satisfying the algebra, geometry, or higher math requirement of paragraph 5.2(1) “*c*.”

(5) The principles of macroeconomics CLEP examination may be considered for satisfying the macroeconomics or finance requirement of paragraph 5.2(1) “*c*.”

(6) The principles of microeconomics CLEP examination may be considered for satisfying the microeconomics or finance requirement of paragraph 5.2(1) “*c*.”

(7) The introductory business law CLEP examination may be considered for satisfying the business law or real estate law requirement of paragraph 5.2(1) “*c*.”

(8) The information systems CLEP examination may be considered for satisfying the computer science requirement of paragraph 5.2(1) “*c*.”

5.2(2) *Core criteria.* In addition to the formal education in subrule 5.2(1), an applicant must complete 200 creditable class hours before taking the AQB-approved examination. All courses must be AQB-approved current core criteria to be considered creditable. The required courses and 200 hours consist of the following:

| | | |
|-----------|--------------------------------------------------------|----------|
| <i>a.</i> | Basic appraisal principles | 30 hours |
| <i>b.</i> | Basic appraisal procedures | 30 hours |
| <i>c.</i> | The 15-hour USPAP course or equivalent | 15 hours |
| <i>d.</i> | Residential market analysis and highest and best use | 15 hours |
| <i>e.</i> | Residential appraiser site valuation and cost approach | 15 hours |
| <i>f.</i> | Residential sales comparison and income approaches | 30 hours |
| <i>g.</i> | Residential report writing and case studies | 15 hours |
| <i>h.</i> | Statistics, modeling and finance | 15 hours |
| <i>i.</i> | Advanced residential applications and case studies | 15 hours |
| <i>j.</i> | Appraisal subject matter electives | 20 hours |

5.2(3) *Degree program.* Credit toward core criteria qualifying education requirements may also be obtained via the completion of a degree in real estate from an accredited degree-granting college or university, provided that the college or university has had its curriculum reviewed and approved by the AQB.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—5.3(543D) Examination. The prerequisite for taking the AQB-approved examination is completion of 200 creditable course hours as specified in subrule 5.2(2). The 200 creditable course hours, collegiate education, and all experience must be completed as specified in subrules 5.2(1) and 5.2(2) and rule 193F—5.4(543D) prior to the examination. For 5.2(2) “*c*,” equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education shall be awarded only when the class is instructed by at least

one AQB-certified USPAP instructor who holds a state-issued certified residential or certified general appraiser credential in active status and good standing.

5.3(1) Qualification.

a. In order to qualify to sit for the certified residential real property appraiser examination, the applicant must:

(1) Complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

(2) Pay the fee specified in 193F—Chapter 12.

b. The core criteria, collegiate education, and experience must be completed and the documentation submitted to the board at the time of application to sit for the examination.

5.3(2) The board may verify educational credits claimed. Undocumented credits will be sufficient cause to invalidate the examination results pursuant to 193F—paragraph 3.3(2) “c.”

5.3(3) Responsibility for documenting the educational credits claimed rests with the applicant.

5.3(4) An applicant must supply the original examination scores when applying for certification. Copies of the scores will not be accepted.

5.3(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months after passing the examination, that examination result loses its validity to support issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading from an associate credential.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—5.4(543D) Supervised experience required for initial certification. All experience required for initial certification pursuant to Iowa Code section 543D.9 shall be performed as a registered associate real property appraiser under the direct supervision of a certified real property appraiser pursuant to the provisions of 193F—Chapter 15.

5.4(1) Acceptable experience. The board will accept as qualifying experience the documented experience attained while the applicant for initial certification was in an educational program recognized by the Appraiser Qualifications Board and Appraisal Subcommittee as providing qualifying experience for initial certification, whether or not the applicant was registered as an associate real property appraiser at the time the educational program was completed. Such programs, if approved by federal authorities, will incorporate direct supervision by a certified real property appraiser and such additional program features as to satisfy the purpose of requiring that qualifying experience be attained by the applicant as an associate real property appraiser.

5.4(2) Exceptions.

a. Applicants for initial certification in Iowa who request that the board approve experience performed in the absence of registration as an associate real property appraiser may file an application for approval on a form provided by the board. The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

(1) The experience is qualifying experience under the substantive and documentation standards of the Appraiser Qualifications Board and Appraisal Subcommittee.

(2) Denial of the application would impose an undue hardship on the applicant.

(3) The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

(4) Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

(5) A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant as an associate real property appraiser under the direct supervision of a certified real property appraiser.

b. Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

(1) The experience was attained in a jurisdiction that, at the time, did not register associate real property appraisers or otherwise offer an associate, trainee or equivalent category of certification.

(2) The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—5.5(543D) Demonstration of experience. The experience necessary for certification pursuant to Iowa Code section 543D.9 must meet the requirements of this rule. The objective of the demonstration of experience is to ensure that, before the applicant is issued a certificate, the applicant has obtained sufficient diversified experience to perform an appraisal.

5.5(1) The applicant shall provide to the board an appraisal log that includes all information required by the AQB as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. The appraisal log shall, at a minimum, include all information as described in 193F—subrule 4.2(3).

5.5(2) The applicant shall accumulate a total of 1,500 hours of residential appraisal experience in no fewer than 12 months while in active status. While the hours may be cumulative, the 12 months must have elapsed before the applicant can apply to take the examination. Experience claimed must have been performed in compliance with USPAP in which the appraiser demonstrates proficiency in appraisal principles methodology, procedures and reporting conclusions. Acceptable appraisal experience includes, but is not limited to, the following:

- a.* Fee and staff appraisal;
- b.* Ad valorem tax appraisal;
- c.* Review appraisal;
- d.* Appraisal analysis;
- e.* Appraisal consulting;
- f.* Highest and best use analysis; and
- g.* Feasibility analysis/study.

5.5(3) The types of experience set out in 5.5(2) are intended neither to exclude other sorts of appraisal experience nor to prescribe a specified minimum array of experience. However, an applicant who cannot demonstrate a background of experience of the diversity manifested by this rule shall bear the burden of showing that the applicant's experience is of sufficient quality and diversity to fulfill the objective of the demonstration of experience.

5.5(4) An applicant may be required to appear before the board or its representative to supplement or verify evidence of experience, which shall be in the form of written reports or file memoranda.

5.5(5) The board may require inspection, by the board itself or by its representatives, of documentation relating to an applicant's claimed experience. Such inspection may be made at the board's offices or such other place as the board may designate.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—5.6(543D) Work product review.

5.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will select three appraisals for work product review and request that the applicant submit four paper copies of each report and four paper copies of each work file in addition to an electronic format requested by the board for each of the selected appraisals along with the appropriate form and fee. The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or

the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

5.6(2) The board shall treat all appraisals received as public records unless the applicant notifies the board at the time of submission that a submitted appraisal is subject to the confidentiality provisions of appraisal standards or is otherwise confidential under state or federal law. While applicants are encouraged to submit appraisals actually performed for clients, applicants may submit one or more demonstration appraisals if the appraisals are prepared based on factual information in the same manner as applicable to actual appraisal assignments and are clearly marked as demonstration appraisals.

5.6(3) An applicant seeking to upgrade to a certified residential real property appraiser shall submit three residential appraisals for review.

5.6(4) The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

5.6(5) The work product review process is not intended as an endorsement of an applicant's work product. No applicant or appraiser shall represent the results of work product review in communications with a client or in marketing to potential clients in a manner which falsely portrays the board's work product review as an endorsement of the appraiser or the appraiser's work product. Failure to comply with this prohibition may be grounds for discipline as a practice harmful or detrimental to the public.

5.6(6) The board views work product review, in part, as an educational process. While the board may deny an application based on an applicant's failure to adhere to appraisal standards or otherwise demonstrate a level of competency upon which the public interest can be protected, the board will attempt to work with applicants deemed in need of assistance to arrive at a mutually agreeable remedial plan. A remedial plan may include additional education, desk review, a mentoring program, or additional precertification experience.

5.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

5.6(8) If probable cause exists, the board may open a disciplinary investigation against a certificate holder based on the work product review of an applicant. A potential disciplinary action could arise, for example, if the applicant is a certified residential real property appraiser seeking an upgrade to a certified general real property appraiser, or where the applicant is uncertified and is working under the supervision of a certified real property appraiser who cosigned the appraisal report.

5.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

5.6(10) The board will retain the appraisals for as long as needed as documentation of the board's actions for the Appraisal Subcommittee or as needed in a pending proceeding involving the work product of the applicant or the applicant's supervisor. When no longer needed for such purposes, the work product may be retained or destroyed at the board's discretion.

5.6(11) Upon successful completion of the work product review process, an applicant will have 60 days to submit an application. All applications filed must meet the current AQB criteria.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—5.7(543D) Upgrade to a certified general real property appraiser. To upgrade from a certified residential real property appraiser to a certified general real property appraiser, an applicant must complete the following additional education, examination, and experience requirements and, effective January 1, 2017, a national criminal history check as provided in Iowa Code section 543D.22.

5.7(1) Education.

a. Collegiate education. Certified residential real property appraisers must satisfy the college-level education requirements as specified in rule 193F—6.2(543D).

b. Core criteria. In addition to the formal education, an applicant must complete 100 creditable class hours before taking the AQB-approved examination. All courses must be AQB-approved under current core criteria to be considered creditable. The required courses and 100 hours consist of the following:

- | | |
|----------------------------------------------------------------|----------|
| (1) General appraiser market analysis and highest and best use | 15 hours |
| (2) General appraiser sales comparison approach | 15 hours |
| (3) General appraiser site valuation and cost approach | 15 hours |
| (4) General appraiser income approach | 45 hours |
| (5) General appraiser report writing and case studies | 10 hours |

5.7(2) Examination. An applicant must satisfy the examination requirements as specified in rule 193F—6.3(543D).

5.7(3) Experience. An applicant must satisfy the experience requirements as specified in rule 193F—6.4(543D).

5.7(4) Work product review. An applicant must satisfy the work product review requirements as specified in rule 193F—6.5(543D).

5.7(5) Background check. Effective January 1, 2017, a national criminal history check as provided in Iowa Code section 543D.22 shall be performed on any appraiser upgrading to a certified general real property appraiser. The applicant shall authorize release of the results of the criminal history check to the board. Unless the criminal history check was completed within 180 calendar days prior to the date the license application is received by the board, the board shall reject and return the application to the applicant.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 3084C, IAB 5/24/17, effective 6/28/17; ARC 4169C, IAB 12/5/18, effective 1/9/19]

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CHAPTER 6
 CERTIFIED GENERAL REAL PROPERTY APPRAISER
 [Prior to 2/20/02, see rule 193F—3.3(543D) and 193F—Chapter 4]

193F—6.1(543D) General.

6.1(1) The certified general real property appraiser classification qualifies the appraiser to appraise all types of real property.

6.1(2) All certified general real property appraisers must comply with USPAP.

6.1(3) Certification is composed of three parts: education, examination, and experience, which includes work product review.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—6.2(543D) Education. Education requirements for an applicant to obtain a certificate as a certified general real property appraiser shall be in compliance with the criteria as set forth by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

6.2(1) Collegiate education. Applicants must hold a bachelor's degree or higher from an accredited college, junior college, community college, or university. If an accredited college or university (accredited by the Commission on Colleges, by a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education) accepts the College-Level Examination Program® (CLEP) examination(s) and issues a transcript for the examination(s) showing the college's or university's approval, the CLEP credit will be considered as credit for the college course. An applicant who submits a master's degree or higher as proof of the applicant's bachelor's degree must include an affidavit or a copy of the bachelor's degree attesting that the bachelor's degree is from an accredited college or university.

6.2(2) Core criteria. In addition to the formal education in 6.2(1), an applicant must complete 300 creditable class hours before taking the AQB-approved examination. All courses must be AQB-approved under current core criteria to be considered creditable. The required courses and 300 hours consist of the following:

| | | |
|-----------|------------------------------------------------------------|----------|
| <i>a.</i> | Basic appraisal principles | 30 hours |
| <i>b.</i> | Basic appraisal procedures | 30 hours |
| <i>c.</i> | The 15-hour USPAP course or equivalent | 15 hours |
| <i>d.</i> | General appraiser market analysis and highest and best use | 30 hours |
| <i>e.</i> | General appraiser site valuation and cost approach | 30 hours |
| <i>f.</i> | General appraiser sales comparison approach | 30 hours |
| <i>g.</i> | General appraiser income approach | 60 hours |
| <i>h.</i> | General appraiser report writing and case studies | 30 hours |
| <i>i.</i> | Statistics, modeling and finance | 15 hours |
| <i>j.</i> | Appraisal subject matter electives | 30 hours |

6.2(3) Degree program. Credit toward core criteria qualifying education requirements may also be obtained via the completion of a degree in real estate from an accredited degree-granting college or university, provided that the college or university has had its curriculum reviewed and approved by the AQB.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—6.3(543D) Examination. The prerequisite for taking the AQB-approved examination is completion of 300 creditable course hours as specified in subrule 6.2(2). The 300 core criteria hours, collegiate education, and all experience must be completed as specified in subrules 6.2(1) and 6.2(2) and rule 193F—6.4(543D) prior to the examination. For 6.2(2)“c,” equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education shall be awarded only when the class is instructed by at least one AQB-certified USPAP instructor who holds a state-issued certified residential or certified general appraiser credential in active status and good standing.

6.3(1) In order to qualify to sit for the certified general real property appraiser examination, the applicant must:

- a. Complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.
- b. Pay the fee specified in 193F—Chapter 12.
- c. The degree, education and experience must be completed and documentation submitted to the board at the time of application to sit for the examination.

6.3(2) The board may verify educational credits claimed. Undocumented credits will be sufficient cause to invalidate the examination results pursuant to 193F—paragraph 3.3(2) “c.”

6.3(3) Responsibility for documenting the educational credits claimed rests with the applicant.

6.3(4) An applicant must supply the original examination scores when applying for certification. Copies of the scores will not be accepted.

6.3(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months after passing the examination, that examination result loses its validity to support issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading from an associate credential.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—6.4(543D) Supervised experience required for initial certification. All experience required to obtain certification as a certified general real property appraiser pursuant to Iowa Code section 543D.9 shall be performed under the direct supervision of a certified general real property appraiser pursuant to the provisions of 193F—Chapter 15.

6.4(1) *Acceptable experience.* The board will accept as qualifying experience the documented experience attained while the applicant for initial certification was in an educational program recognized by the Appraiser Qualifications Board and Appraisal Subcommittee as providing qualifying experience for certification, whether or not the applicant was registered as an associate real property appraiser at the time the educational program was completed. Such programs, if approved by federal authorities, will incorporate direct supervision by a certified real property appraiser and such additional program features as to satisfy the purpose of requiring that qualifying experience be attained by the applicant as a real property appraiser.

6.4(2) *Exceptions.*

a. Applicants for certified general real property certification in Iowa who request that the board approve experience performed in the absence of registration as an associate real property appraiser may file an application for approval on a form provided by the board. The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

(1) The experience is qualifying experience under the substantive and documentation standards of the Appraiser Qualifications Board and Appraisal Subcommittee.

(2) Denial of the application would impose an undue hardship on the applicant.

(3) The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

(4) Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

(5) A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant under the direct supervision of a certified general real property appraiser.

b. Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

(1) The experience was attained in a jurisdiction that, at the time, did not require direct supervision or register associate real property appraisers or otherwise offer a category of certification.

(2) The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—6.5(543D) Demonstration of experience. The experience necessary for certification pursuant to Iowa Code section 543D.9 must meet the requirements of this rule. The objective of the demonstration of experience is to ensure that, before the applicant is issued a certificate, the applicant has obtained sufficient diversified experience to perform an appraisal.

6.5(1) The applicant shall provide to the board an appraisal log that includes all information required by the AQB as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. The appraisal log shall, at a minimum, include all information as described in 193F—subrule 4.2(3).

6.5(2) The applicant shall accumulate a total of 3,000 hours of appraisal experience in no fewer than 18 months while in active status, of which 1,500 hours must consist of nonresidential appraisal experience. While the hours may be cumulative, the 18 months must have elapsed before an applicant can be certified. Experience claimed must have been performed in compliance with USPAP where the appraiser demonstrates proficiency in appraisal principles methodology, procedures and reporting conclusions. Acceptable appraisal experience includes, but is not limited to, the following:

- a. Fee and staff appraisal;
- b. Ad valorem tax appraisal;
- c. Review appraisal;
- d. Appraisal analysis;
- e. Appraisal consulting;
- f. Highest and best use analysis; and
- g. Feasibility analysis/study.

6.5(3) The types of experience set out in 6.5(2) are intended neither to exclude other sorts of appraisal experience nor to prescribe a specified minimum array of experience. However, an applicant who cannot demonstrate a background of experience of the diversity manifested by this rule shall bear the burden of showing that the applicant's experience is of sufficient quality and diversity to fulfill the objective of the demonstration of experience.

6.5(4) An applicant may be required to appear before the board or its representative to supplement or verify evidence of experience, which shall be in the form of written reports or file memoranda.

6.5(5) The board may require inspection, by the board itself or by its representatives, of documentation relating to an applicant's claimed experience. Such inspection may be made at the board's offices or such other place as the board may designate.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—6.6(543D) Work product review.

6.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will then select three appraisals for work product review and request that the applicant submit four paper copies of each report and four paper copies of each work file in addition to an electronic format requested by the board for each of the selected appraisals along with the appropriate form and fee. The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be

selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

6.6(2) The board shall treat all appraisals received as public records unless the applicant notifies the board at the time of submission that a submitted appraisal is subject to the confidentiality provisions of appraisal standards or is otherwise confidential under state or federal law. While applicants are encouraged to submit appraisals actually performed for clients, applicants may submit one or more demonstration appraisals if the appraisals are prepared based on factual information in the same manner as applicable to actual appraisal assignments and are clearly marked as demonstration appraisals.

6.6(3) An applicant seeking original or upgrade certification as a certified general real property appraiser shall submit one residential appraisal and two nonresidential appraisals for review.

6.6(4) The board, or a committee of the board, will evaluate the submitted work product. The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

6.6(5) The work product review process is not intended as an endorsement of an applicant's work product. No applicant or appraiser shall represent the results of work product review in communications with a client or in marketing to potential clients in a manner which falsely portrays the board's work product review as an endorsement of the appraiser or the appraiser's work product. Failure to comply with this prohibition may be grounds for discipline as a practice harmful or detrimental to the public.

6.6(6) The board views work product review, in part, as an educational process. While the board may deny an application based on an applicant's failure to adhere to appraisal standards or otherwise demonstrate a level of competency upon which the public interest can be protected, the board will attempt to work with applicants deemed in need of assistance to arrive at a mutually agreeable remedial plan. A remedial plan may include additional education, desk review, a mentoring program, or additional precertification experience.

6.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

6.6(8) If probable cause exists, the board may open a disciplinary investigation against a certificate holder based on the work product review of an applicant. A potential disciplinary action could arise, for example, if the applicant is a certified residential real property appraiser seeking an upgrade to a certified general real property appraiser, or where the applicant is uncertified and is working under the supervision of a certified real property appraiser who cosigned the appraisal report.

6.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

6.6(10) The board will retain the appraisals for as long as needed as documentation of the board's actions for the Appraisal Subcommittee or as needed in a pending proceeding involving the work product of the applicant or the applicant's supervisor. When no longer needed for such purposes, the work product may be retained or destroyed at the board's discretion.

6.6(11) Upon successful completion of the work product review process, an applicant will have 60 days to submit an application. All applications filed must meet current AQB criteria.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—6.7(543D) Background check. Effective January 1, 2017, a national criminal history check as provided in Iowa Code section 543D.22 shall be performed on any appraiser upgrading to a new credential. The applicant shall authorize release of the results of the criminal history check to the board.

Unless the criminal history check was completed within 180 calendar days prior to the date the license application is received by the board, the board shall reject and return the application to the applicant.

[ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 3084C, IAB 5/24/17, effective 6/28/17]

These rules are intended to implement Iowa Code sections 543D.5, 543D.8, 543D.9, and 543D.22.

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CHAPTER 8 INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—8.1(272C,543D) Disciplinary action. The real estate appraiser examining board has authority pursuant to Iowa Code chapters 543D, 17A and 272C to impose discipline for violations of these Iowa Code chapters and the rules promulgated thereunder.

193F—8.2(17A,272C,543D) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated a law or rule enforced by the board which, if true, would constitute grounds for licensee discipline.

193F—8.3(272C,543D) Sources of information. Without limitation, the following nonexclusive list of information sources may form the basis for the initiation of a disciplinary investigation or proceeding:

1. News articles or other media sources.
2. General or random review of publicly available work product.
3. Reports filed with the board by the commissioner of insurance pursuant to Iowa Code subsection 272C.4(9).
4. Complaints filed with the board by any member of the public.
5. License applications or other documents submitted to the board, including appraisal logs and appraisal reports.
6. Reports to the board from any regulatory or law enforcement agency from any jurisdiction.
7. Board audits of licensee compliance with conditions for licensure, such as continuing education or qualifying experience.

193F—8.4(17A,272C,543D) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193F—8.5(272C,543D) Complaints. Written complaints may be submitted to the board office by mail, E-mail, facsimile or personal delivery by members of the public, including clients, business organizations, lenders, governmental bodies, licensees, or other individuals or entities with knowledge of possible law or rule violations by licensees.

8.5(1) Contents of a written complaint. Written complaints may be submitted on forms provided by the board that are available from the board office and on the board's Web site. Written complaints, whether submitted on a board complaint form or in other written media, shall contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

8.5(2) Immunity. As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

8.5(3) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which may be initiated by the board based in whole or in part on information provided by the complainant.

8.5(4) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

8.5(5) *Initial complaint screening.* All written complaints received by the board shall be initially screened by the board's executive officer to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous shall be referred by the board's executive officer to the board for closure at the next scheduled board meeting. All other complaints shall be referred by the board's executive officer to the board's disciplinary committee for committee review as described in subrule 8.8(1).

193F—8.6(272C,543D) Case numbers. Whether based on written complaint received by the board or complaint initiated by the board, all complaint files shall be tracked by a case numbering system. Complaints are assigned case numbers in chronological order with the first two digits representing the year in which the complaint was received or initiated, and the second two digits representing the order in which the case file was opened (e.g., 01-01, 01-02, 01-03, etc.). The board's executive officer shall maintain a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

193F—8.7(272C,543D,546) Confidentiality of complaint and investigative information.

8.7(1) All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code subsection 272C.6(4). Such information shall not be released to any person except as provided in that section and in this rule.

8.7(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9), the board may, prior to the initiation of a disciplinary proceeding, supply to a licensee who is the subject of a disciplinary complaint or investigation all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee but prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review report or investigative report or with expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may disclose information from a peer review report or consultant's report when soliciting the licensee's position will aid in making the probable cause determination or when providing the information would be educational to the licensee, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.
[ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—8.8(17A,272C,543D) Investigation procedures.

8.8(1) *Disciplinary committee.* The board chairperson shall annually appoint two to three members of the board to serve on the board's disciplinary committee. The disciplinary committee is a purely advisory body which shall review complaint files referred by the board's executive officer, generally supervise the investigation of complaints, and make recommendations to the full board on the disposition of complaints. Members of the committee shall not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

8.8(2) *Committee screening of complaints.* Upon the referral of a complaint from the board's executive officer or from the full board, the committee shall determine whether the complaint presents facts which, if true, suggest that a licensee may have violated a law or rule enforced by the board. If the committee concludes that the complaint does not present facts which suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee shall refer the complaint to the full board with the recommendation that the complaint be closed with no further action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full board recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

8.8(3) *Committee procedures.* If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer review committee, provide the licensee an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193F—8.9(17A,272C,543D) or request board staff to conduct further investigation. Upon completion of an investigation, the investigator, expert consultant, peer review committee or board staff shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

- a. Request further investigation.
- b. Determine there is not probable cause to believe a disciplinary violation has occurred, and refer the case to the full board with the recommendation of closure.
- c. Determine there is probable cause to believe that a law or rule enforced by the board has been violated, but that disciplinary action is unwarranted on other grounds, and refer the case to the full board with the recommendation of closure. The committee may also recommend that the licensee be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.
- d. Determine there is probable cause to believe a disciplinary violation has occurred, and refer the case to the full board with the recommendation that the board initiate a disciplinary proceeding (contested case).

8.8(4) *Subpoena authority.* Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision about whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in 193F—Chapter 19.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.9(17A,272C,543D) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee any opportunity to appear

before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

8.9(1) An informal discussion is intended to provide a licensee an opportunity to share in an informal setting the licensee's side of a complaint before the board determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not required to attend an informal discussion. Because disciplinary investigations are confidential, licensees may not bring other persons with them to an informal discussion, but licensees may be represented by legal counsel.

8.9(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

8.9(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

8.9(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule 193F—20.4(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.10(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint. The committee may consist of one or more certified general or certified residential real property appraisers registered to practice in Iowa. The board may appoint a single peer review consultant to perform the functions of a PRC when, in the board's opinion, appointing a committee with more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint. An individual shall be ineligible as a PRC member in accordance with the standard for disqualification found in rule 193F—20.14(17A).

8.10(1) Authority. The PRC investigation may include activities such as interviewing the complainant, the respondent, and individuals with knowledge of the respondent's practice in the community; gathering documents; and performing independent analyses as deemed necessary. The board may give specific instructions to the PRC regarding the scope of the investigation. In the course of the investigation, PRC members shall refrain from advising the complainant or respondent on actions that the board might take.

8.10(2) Term of service. The PRC serves at the pleasure of the board. The board may dismiss any or all members of a PRC or add new members at any time.

8.10(3) Compensation. PRC members may receive compensation as the board may provide by contract. Within established budget limitations, PRC members may be reimbursed for reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties. The PRC shall not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

8.10(4) Reports. Each PRC shall submit a written report to the board within a reasonable period of time.

8.10(5) Components of the report. The report shall include:

- a. Statement of the charge to the PRC;
- b. Description of the actions taken by the PRC in its investigation, including but not limited to appraisal review(s) and interviews with the respondent or complainant;
- c. Summary of the PRC's findings, including the PRC's opinion as to whether a violation occurred, citation of the specific USPAP violation(s), citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and the PRC's opinion of the seriousness of the violation;
- d. Recommendation.

8.10(6) *Recommended action.* The PRC report shall recommend one of the following:

- a. Dismissal of the complaint;
- b. Further investigation;
- c. Disciplinary proceedings;
- d. Allowing the appraiser who is the subject of the complaint an opportunity to appear before the board for an informal discussion regarding the circumstances of the alleged violation.

If the PRC recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board including citation of the specific USPAP violation(s), Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

8.10(7) *Disciplinary recommendations.* When recommending disciplinary proceedings, a PRC shall refrain from suggesting a particular form of discipline, but may provide guidance on the severity of the violations that prompted the recommendation and may identify professional areas in which the appraiser needs additional education or supervision in order to safely practice.

8.10(8) *Confidentiality.* The PRC shall not discuss its findings and conclusions with any party to the complaint other than the board (through its report to the board) or board staff. PRC findings including the name of the complainant shall be kept confidential at all times. PRC findings shall be used only for the purposes of the board's possible disciplinary action and not for any other court case, lawsuit, or investigation.

8.10(9) *Testimony.* In the event of formal disciplinary proceedings, PRC members may be required to testify.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.11(17A,272C,543D) Closing complaint files.

8.11(1) *Grounds for closing.* Upon the recommendation of the executive officer, the recommendation of the disciplinary committee, or on its own motion, the board may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the board may close a complaint file. The following nonexclusive list is, however, illustrative of the grounds upon which the board may close a complaint file:

- a. The complaint alleges matters outside the board's jurisdiction.
- b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the board.
- c. The complaint is frivolous or trivial.
- d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rule making.
- e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.
- f. Resources are unavailable or better directed to other complaints or board initiatives in light of the board's overall budget and mission.
- g. While the evidence may reveal one or more appraisal standards about which the appraiser should be more vigilant in the future, the issues appear correctable, are not likely to recur with proper diligence in the development and reporting of future appraisals, and do not reveal impediments to competent practice in the future.

h. Other extenuating factors exist which weigh against the imposition of public discipline when considered in the context of the board's purpose and mission.

8.11(2) Closing orders. The board's executive officer may enter an order stating the basis for the board's decision to close a complaint file. If entered, the order shall not contain the identity of the complainant or the respondent and shall not disclose confidential complaint or investigative information.

If entered, a closing order will be indexed by case number and shall be a public record pursuant to Iowa Code subsection 17.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The board's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

8.11(3) Cautionary letters. The board may issue a confidential letter of caution to a licensee when a complaint file is closed which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

8.11(4) Reopening closed complaint files. The board may reopen a closed complaint file if additional information arises after closure which provides a basis to reassess the merits of the initial complaint.

193F—8.12(17A,272C,543D) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified shall not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, three members of the board shall constitute a quorum of the remaining five board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11, subsection 5. Discipline may only be imposed against a licensee by the affirmative vote of a majority of the members of the board who are not disqualified.

193F—8.13(17A,272C,543D) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in 193F—Chapter 20 shall apply to disciplinary contested cases initiated by the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.14(543D) Decisions. The board shall make findings of fact and conclusions of law, and may take one or more of the following actions:

1. Dismiss the charges;
2. Suspend or revoke the appraiser's certification or associate's registration as authorized by law;
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Impose a period of probation, either with or without conditions;
5. Require reexamination;
6. Require additional professional education, reeducation, or continuing education;
7. Issue a citation and a warning;
8. Require desk review of the appraiser's work product;
9. Issue a consent order;
10. Impose any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

193F—8.15(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include:

- 8.15(1) History and background of respondent.**

- a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.
- b. Prior disciplinary history or cautionary letters.
- c. Length of certification or registration at the time of the violation.
- d. Disciplinary history of current or prior supervisor.
- e. Degree of cooperation with investigation.
- f. Extent of self-initiated reform or remedial action after the date of the violation.
- g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.
- h. Whether the respondent practiced with a lapsed, inactive, suspended, revoked, or surrendered certificate or registration.

8.15(2) Nature of violation.

- a. Length of time since the date of the violation.
- b. Whether the violation is isolated or recurring.
- c. Whether there are multiple violations or appraisals involved.
- d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.
- e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.
- f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).
- g. The clarity of the issue or standard involved.
- h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.
- i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.15(3) Interest of the public.

- a. Degree of financial or other harm to a client, consumer, lending institution, or others.
- b. Risk of harm, whether or not the violation caused actual harm.
- c. Economic or other benefit gained by respondent or by others as a result of the violation.
- d. Deterrent impact of discipline.
- e. Whether the respondent issued a corrected appraisal report when warranted.

[ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—8.16(272C,543D) Voluntary surrender. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board shall not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

193F—8.17(272C,543D) Reinstatement. In addition to the provisions of rule 193F—20.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

8.17(1) The board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, board members or staff before whom the applicant appears.

8.17(2) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193F—8.14(543D).

8.17(3) The board shall not grant an application for reinstatement when the initial order which revoked, suspended or restricted the license, denied license renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

- a.* All terms of the sentencing or other criminal order have been fully satisfied;
- b.* The applicant has been released from confinement and any applicable probation or parole; and
- c.* Restitution has been made or is reasonably in the process of being made to any victims of the

crime.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code sections 543D.5, 543D.17 and 543D.18 and chapters 17A and 272C.

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CHAPTER 9
RENEWAL, EXPIRATION AND REINSTATEMENT OF
CERTIFICATES AND REGISTRATIONS, AND INACTIVE STATUS
[Prior to 2/20/02, see rules 193F—4.2(543D) and 193F—4.5(543D)]

193F—9.1(272C,543D) Biennial renewal.

9.1(1) Certificates and associate registrations must be renewed on a biennial basis or they shall lapse.

9.1(2) Persons whose last names begin with A to K shall renew in even-numbered years. Persons whose last names begin with L to Z shall renew in odd-numbered years. Certificates and registrations shall expire biennially on June 30.

9.1(3) An application to renew a certificate or registration shall be submitted on a form obtained from the board office or on the board's website. Applicants may renew electronically through a board-established electronic process, as available.

193F—9.2(272C,543D) Notices.

9.2(1) It is the policy of the board to mail or send electronic renewal notices to certified and associate appraisers at the last address or email address on file with the board in the May preceding certificate or registration expiration. Neither the failure of the board to send such a notice nor the licensee's failure to receive such a notice shall excuse the requirement to timely renew and pay the renewal fee.

9.2(2) Certified and associate appraisers must ensure that the address on file with the board office is current and that the board is notified within 30 days of any address change.
[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—9.3(272C,543D) Renewal procedures.

9.3(1) *Date of filing.* Certified and associate appraisers shall file a timely and sufficient renewal application with the board by the June 30 deadline in the biennial renewal year. An application shall be deemed filed on the date received by the board, the date of electronic submission or, if mailed, the date postmarked, but not the date metered. Applications to renew that are not timely received by the board shall be treated as applications to reinstate, as provided in rule 193F—9.4(272C,543D).

9.3(2) *Continuing education.* An applicant for renewal shall report the applicant's compliance with the continuing education requirements provided in 193F—Chapter 11. Full compliance with applicable continuing education requirements is a condition of renewal in active status. Applications to renew certificates or registrations in active status that do not, on their face, demonstrate full compliance with all applicable continuing education requirements shall be rejected as insufficient, as provided in subrule 9.3(4).

9.3(3) *Background disclosures.* An applicant for renewal shall disclose such background and character information as the board requests, which may include disciplinary action taken by any jurisdiction regarding a professional license of any type, the denial of an application for a professional license of any type by any jurisdiction, and the conviction of any crime.

9.3(4) *Insufficient applications.* The board shall reject applications that are insufficient. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- a.* Be signed by the applicant if submitted in person or mailed, or be certified as accurate if submitted electronically;
- b.* Be fully completed;
- c.* Reflect, on its face, full compliance with all applicable continuing education requirements; and
- d.* Be accompanied by the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or written on a closed account.

9.3(5) *Resubmission of rejected applications.* The board shall promptly notify an applicant of the basis for rejecting an insufficient renewal application, and shall return or refund any fees received. Applicants for certificate or registration renewal may remedy the insufficiency and resubmit applications

that were rejected as insufficient. Resubmitted applications shall be deemed received when personally delivered to the board office, on the date of electronic submission or, if mailed, the date postmarked, but not the date metered. Resubmitted applications to renew that are not timely received by the board shall be treated as applications to reinstate, as provided in rule 193F—9.4(272C,543D).

9.3(6) *Administrative processing not determinative.* The administrative processing of an application to renew a certificate or registration shall not prevent the board from subsequently commencing a contested case to challenge the applicant's qualifications for continued licensure or to assert disciplinary charges if grounds exist to do so. The board may take such an action, for example, if an application to renew reflects full compliance with continuing education, but the licensee is unable to document compliance in a subsequent audit.

9.3(7) *Denial of timely and sufficient application to renew.* If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant stating the grounds for denial. The procedures described in rule 193F—20.40(546,543D,272C) shall apply.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—9.4(272C,543D) Failure to renew.

9.4(1) The certificate or registration of a certified or associate appraiser shall lapse unless the appraiser submits a timely and sufficient renewal application by the expiration date.

9.4(2) A certified or associate appraiser may renew a certificate or registration after the expiration date by submitting a sufficient renewal application and biennial renewal fee, accompanied by an additional penalty of 25 percent of the biennial renewal fee, within 30 calendar days of the expiration date. The board will allow the reinstatement of a lapsed certificate or registration during the 30-day period following expiration for an appraiser who did not complete all required continuing education during the prior biennium but who will have sufficient continuing education if courses completed during the 30-day period following lapse are included; provided that such applicant must demonstrate 42 hours of qualifying continuing education rather than the 28 hours required to renew for those who completed all continuing education on a timely basis prior to the lapse. The continuing education completed between July 1 and July 30 that fulfills a shortage of continuing education in the prior biennium shall not be counted toward the continuing education required in a subsequent renewal.

9.4(3) If a certified or associate appraiser fails to renew within the 30-day grace period provided for in subrule 9.4(2), the appraiser shall be required to reinstate in accordance with subrule 9.4(5).

9.4(4) Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is lapsed, including during the 30-day grace period following the lapse. Any violation of this subrule shall be grounds for discipline.

9.4(5) Reinstatement. The board may reinstate a lapsed certificate or registration upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided in rule 193F—12.1(543D); and
- b. Paying the current renewal fee as provided in rule 193F—12.1(543D); and
- c. Providing evidence of completed continuing education outlined in rule 193F—11.2(272C,543D), as modified for associate appraisers in subrule 9.4(6), if the licensee wishes to reinstate to active status; and
- d. Providing a written statement outlining the professional activities of the applicant in the state of Iowa during the period in which the applicant's certificate or registration was lapsed. The statement shall describe all appraisal services performed, with or without the use of the titles described in Iowa Code section 543D.15, for all appraisal assignments that are required by federal or state law, rule, or policy to be performed by a certified real estate appraiser.

9.4(6) Special continuing education requirements for reinstating associate appraisers. The board seeks to ensure that associate appraisers make progress toward full completion of all qualifying education required for eventual certification, as provided in rules 193F—5.2(543D) and 193F—6.2(543D). As a result, an associate appraiser applying to reinstate a registration that has been lapsed for 12 months or longer shall apply, in addition to the most recent 7-hour USPAP course, only qualifying education toward

the continuing education required for reinstatement, until all qualifying education has been completed. All qualifying education taken as continuing education may also be applied as qualifying education toward certification. If the applicant has already completed all qualifying education or is required to have continuing education hours beyond those needed to fully complete all qualifying education, the applicant may use any approved continuing education course in addition to the mandatory 7-hour USPAP course. [ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—9.5(272C,543D) Inactive status.

9.5(1) *General purpose.* This rule establishes a procedure under which a person issued a certificate or associate registration may apply to the board to register in inactive status. Registration under this rule is available to a certificate holder or associate registrant residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate or associate registration is required. A person eligible to register as inactive may, as an alternative to such registration, allow a certificate or associate registration to lapse. The board will continue to maintain a data base on persons registered as inactive, including information which may not routinely be maintained after a certificate or associate registration has lapsed through failure to renew. A person who registers as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board. Because a person registered in inactive status may not practice in Iowa or hold oneself out to the public as authorized to practice as a certified appraiser or registered associate appraiser, such person is not required to complete continuing education.

9.5(2) *Eligibility.* A person holding a lapsed or active certificate as a real property appraiser, or a lapsed or active registration as a registered associate, which has not been revoked or suspended may apply on forms provided by the board to register as inactive if the person is not engaged in the state of Iowa in any practice for which a certificate or associate registration is required. Such a person may be actively engaged in the practice of real estate appraising in another jurisdiction. Such a person may also engage in such appraisal practices as may be performed in Iowa by persons who do not hold a certificate as a real property appraiser or associate registration as long as the person does not hold oneself out to the public as a certified or associate real estate appraiser.

9.5(3) *Affirmation.* The application form shall contain a statement in which the applicant affirms that the applicant will not engage in any practice prohibited by subrule 9.5(2) in Iowa without first complying with all rules governing reactivation to active status. A person in inactive status may reactivate to active status at any time pursuant to subrule 9.5(6).

9.5(4) *Renewal.* A person registered as inactive may renew the person's certificate or associate registration on the biennial schedule described in 193F—9.1(272C,543D). Such person is exempt from the continuing education requirements for renewal and will be charged a reduced rate, as provided in 193F—Chapter 12. An inactive certificate or associate registration shall lapse if not timely renewed. An active certificate holder or associate registrant may renew as inactive if such person has not completed all continuing education requirements and may thereafter apply for active status when the deficiency has been remedied.

9.5(5) *Grounds for discipline.* Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is in inactive status. Any violation of this subrule shall be grounds for discipline.

9.5(6) *Reactivation.* A person registered as inactive shall apply to reactivate to active status prior to engaging in any practice in Iowa that requires certification or associate registration. An application to reactivate to active status shall be on a form provided by the board, shall demonstrate full compliance with all applicable continuing education requirements, and shall be accompanied by a change of status fee and the biennial fee for active status as provided in rule 193F—12.1(543D). Prior to reactivation to active status, the applicant must complete all education that would have been required had the applicant been on active status, including the most recent seven-hour USPAP update course. All such continuing education must be verified whether or not the applicant has been in active practice in another jurisdiction. Additionally, the special continuing education requirements that apply to associate appraisers reinstating a lapsed registration, as provided in subrule 9.4(6), shall apply to associate appraisers reactivating to

active status following a period of inactive status of 12 months or longer. Such an applicant shall be given credit for the most recent renewal fees previously paid if the applicant applies to reactivate in the same biennium at other than the applicant's regular renewal date. An applicant changing from active to inactive status during a biennial renewal period shall not, however, be entitled to a refund of any of the fees previously paid to attain active status.

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—9.6(272C,543D) Property of the board. Every certificate or associate registration issued by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall, nevertheless, always remain the property of the board. In the event that a certificate or associate registration is revoked or suspended, or is not renewed, or is registered in inactive status, it shall, on demand, be delivered by the holder to the board. The board shall generally not request return of a certificate or associate registration if it has not been revoked, suspended or voluntarily surrendered in a disciplinary action, but may do so if the board reasonably determines that grounds exist to believe that a person holding a lapsed or inactive certificate or associate registration has engaged in a practice for which active certification or registration is required.

These rules are intended to implement Iowa Code section 543D.5.

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CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/20/02, see 193F—Chapter 6]

193F—11.1(272C,543D) Definitions. For the purpose of these rules, the following definitions shall apply:

“Approved program” means a continuing education program, course, or activity that satisfies the standards set forth in these rules and has received advance approval of the board pursuant to these rules.

“Approved provider” means a person or an organization that has been approved by the board to conduct continuing education programs pursuant to these rules.

“Board” means the Iowa real estate appraiser examining board.

“Continuing education” means education which is obtained by a person certified to practice real estate appraising in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or registration, or to develop new and relevant skills and knowledge, all as a condition of renewal.

“Credit hour” means the value assigned by the board to a continuing education program.

“Distance education” means any education process based on the geographical separation of student and instructor. “Distance education” includes computer-generated programs and webinars.

“Guest speaker” means an individual who teaches an appraisal education program on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter.

“Hour” means 50 minutes of instruction.

“Live instruction” means an educational program delivered in a classroom setting where both the student and the instructor are present in the same room.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.2(272C,543D) Continuing education requirements.

11.2(1) Certified residential, certified general and associate appraisers must demonstrate compliance with the following continuing education requirements as a condition of biennial renewal:

a. A minimum of 28 credit hours in approved continuing education programs must be acquired during the two-year renewal period. Carryover hours from a previous renewal period are not allowed.

b. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser’s skill, knowledge and competency in real estate appraising. Credit may be granted for educational offerings that are consistent with the purpose of continuing education. A minimum of 21 of the required 28 credit hours must involve courses that address one or more of the subject areas listed in subrule 11.4(2).

c. Appraisers must successfully complete the seven-hour National USPAP Update Course, or its equivalent, each two-year renewal cycle. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP continuing education credit shall be awarded only when the class is instructed by an AQB-certified instructor(s) and when the class is instructed by at least one state-certified residential or state-certified general appraiser. Individuals who are credentialed in more than one jurisdiction shall not have to take more than one seven-hour National USPAP Update Course within a two-calendar-year period for the purposes of meeting AQB criteria.

11.2(2) All continuing education credit hours may be acquired in approved classroom or distance education programs.

11.2(3) A maximum of 14 of the required 28 credit hours may be claimed by an instructor for teaching one or more approved continuing education programs in an amount equal to the credit hours approved for attendees. Instructors claiming such credit must teach the appraisal course during the renewal cycle in which credit is claimed and may not claim the course more than once in the renewal cycle. The board may request supportive documentation to ascertain course content and to verify the date(s), time, place and hours taught.

11.2(4) An applicant seeking to renew an initial certificate or registration issued less than 185 days prior to renewal is not required to report any continuing education. An applicant seeking to renew an initial certificate or registration issued for 185 days to 365 days prior to renewal must demonstrate completion of at least 14 credit hours, including 7 credit hours of the most recent National USPAP Update. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more must demonstrate completion of at least 28 credit hours, including 7 credit hours of the most recent National USPAP Update.

11.2(5) Prior to reinstatement or reactivation of a certified general registration or a certified residential registration, a certified credential holder in inactive or lapsed status must complete all required continuing education hours that would have been required if the certified credential holder was in active status. The required hours must also include the most recent edition of a 7-hour National USPAP Update Course. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once, except USPAP courses.

11.2(7) Successful completion of a continuing education program requires that at least 50 minutes of every class hour be attended by the student. Continuing education credits shall not be granted to attendees who are present for less than 50 minutes of every class hour.

11.2(8) An applicant may claim continuing education credits earned in a state that has a continuing education requirement for renewal of a real estate appraisal certificate if the program is approved by the appraisal certification board of that state or the Appraiser Qualifications Board for continuing education purposes. All other programs must be approved upon application to the board pursuant to rules 193F—11.4(272C,543D), 193F—11.5(272C,543D) and 193F—11.6(272C,543D).

11.2(9) A person certified or registered to practice real estate appraising in Iowa shall be deemed to have complied with Iowa's continuing education requirements for periods in which the person is a resident of another state or district having continuing education requirements for real estate appraising and meets all requirements of that state or district. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements. Deferrals may not be granted to credential holders, except in the case of persons returning from active military duty. Credential holders returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements. To qualify, the credential holder must submit a request in writing and provide a copy of the military orders.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 0412C, IAB 10/31/12, effective 12/5/12; ARC 0635C, IAB 3/6/13, effective 4/10/13; ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.3(272C,543D) Hardship and disability provisions. Rescinded IAB 5/20/09, effective 6/24/09.

193F—11.4(272C,543D) Minimum program qualifications.

11.4(1) Continuing education programs, as a condition of board approval, must provide a formal program of learning that contributes to the growth in the professional knowledge and professional competence of real estate appraisers.

11.4(2) Continuing education programs dealing with the following subject areas that are integrally related to appraisal topics will generally be acceptable:

- a. Ad valorem taxation;
- b. Agriculture production and economics;
- c. Agronomy/soil;
- d. Approaches to value;
- e. Arbitrations, dispute resolution;
- f. Courses related to the practice of real estate appraisal or consulting;
- g. Construction cost or development cost estimating;
- h. Ethics and standards of professional practice, USPAP;
- i. Land use planning or zoning;

- j.* Management, leasing, time sharing;
- k.* Property development, partial interests;
- l.* Real estate appraisal law and rules;
- m.* Real estate appraisal (valuations/evaluations);
- n.* Real estate law, easements, and legal interests;
- o.* Real estate litigation, damages, condemnation;
- p.* Real estate financing and investment;
- q.* Real estate appraisal-related computer applications;
- r.* Real estate securities and syndication;
- s.* Developing opinions of real property value in appraisals that also include personal property or business value, or both;
- t.* Seller concessions and impact on value; and
- u.* Energy efficient items and “green building” appraisals.

11.4(3) The following programs will not be acceptable:

- a.* Sales promotion or other meetings held in conjunction with the appraiser’s general business;
- b.* Time devoted to breakfast, lunch or dinner;
- c.* A program certified by the use of a challenge examination. The required number of hours must be completed to receive credit hours;
- d.* Meetings that are a normal part of the in-house staff or employee training;
- e.* Programs that do not provide at least two credit hours.

11.4(4) Continuing education credit will be granted only for whole hours, with a minimum of 50 minutes constituting one hour. For example, 100 minutes of continuous instruction would count as two credit hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would only count as one hour.

11.4(5) Continuing education credit may be approved for university or college courses in qualifying topics according to the following formula: Each semester hour of credit shall equal 15 credit hours and each quarter hour of credit shall equal 10 credit hours.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.5(272C,543D) Standards for provider and program approval. Providers and programs must satisfy the following minimum standards in order to be preapproved in accordance with the procedures established in rule 193F—11.4(272C,543D) and in order to maintain approved status.

11.5(1) The program must be taught or developed by individuals who have the education, training and experience to be considered experts in the subject matter of the program and competent in the use of teaching methods appropriate to the program.

11.5(2) Live instruction programs must be taught by instructors who have successfully completed an instructor development workshop within 24 months preceding board approval of the program. Certified USPAP instructors shall be considered to have met this requirement.

11.5(3) In determining whether an instructor is qualified to teach a particular program, the board will consider whether the instructor has an ability to teach and an in-depth knowledge of the subject matter.

11.5(4) An instructor may demonstrate the ability to teach by meeting one or more of the following criteria:

- a.* Hold a bachelor’s degree or higher in education from an accredited college (attach a copy of transcripts);
- b.* Hold a current teaching credential or certificate in any real estate or real estate-related fields (attach copy);
- c.* Hold a certificate of completion in the area of instruction from an instructor institute, workshop or school that is sponsored by a member of the Appraisal Foundation (detail specific teaching experiences);
- d.* Hold a full-time current appointment to the faculty of an accredited college;
- e.* Other, as the board may determine.

11.5(5) An instructor may demonstrate in-depth knowledge of the program's subject matter by meeting one or more of the following criteria:

- a.* Hold a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the instructor proposes to teach, such as business, economics, accounting, real estate or finance (attach copy of transcript);
- b.* Hold a bachelor's degree or higher from an accredited college and have five years of appraisal experience related to the subject matter of the course the instructor proposes to teach (attach copy of transcript and document how the instructor's experience is related to the subject matter the instructor proposes to teach);
- c.* Hold a generally recognized professional real property appraisal designation or be a sponsor member of the Appraisal Foundation;
- d.* Other, as the board may determine.

11.5(6) Only AQB-certified USPAP instructors, listed on the Web site of the Appraisal Foundation may teach the national USPAP courses including the 15-hour tested course and the 7-hour continuing education course.

11.5(7) Course content and materials must be accurate, consistent with currently accepted standards relating to the program's subject matter and updated no later than 30 days after the effective date of a change in standards, laws or rules.

11.5(8) Programs must have an appropriate means of written evaluation by participants. Evaluations shall include the relevance of the materials, effectiveness of presentation, content, facilities, and such additional features as are appropriate to the nature of the program.

11.5(9) No part of any course shall be used to solicit memberships in organizations, recruit appraisers for affiliation with any organization or advertise the merits of any organization or sell any product or service.

11.5(10) Providers must clearly inform prospective participants of the number of credit hours preapproved by the board for each program and all applicable policies concerning registration, payment, refunds, attendance requirements and examination grading.

11.5(11) Procedures must be in place to monitor whether the person receiving credit hours is the person who attended or completed the program.

11.5(12) Providers must be accessible to students during normal business hours to answer questions and provide assistance as necessary.

11.5(13) Providers must comply with or demonstrate exemption from the provisions of Iowa Code sections 714.14 to 714.25.

11.5(14) Providers must designate a coordinator in charge of each program who will act as the board's contact on all compliance issues.

11.5(15) Programs shall not offer more than eight credit hours in a single day.

11.5(16) Providers shall not provide any information to the board, the public or prospective students which is misleading in nature. For example, providers may not refer to themselves as a "college" or "university" unless qualified as such under Iowa law.

11.5(17) Providers must establish and maintain for a period of five years complete and detailed records on the programs successfully attended by each Iowa participant.

11.5(18) Providers must issue an individual certificate of attendance to each participant upon successful completion of the program. The certificate must be no larger than 8½" × 11" and must include the provider name and number, program name and number, name of attendee, date program was completed, number of approved credit hours, and the signature of the coordinator or other person authorized by the board.

11.5(19) Program providers and instructors are solely responsible for the accuracy of all program materials, instruction and examinations. Board approval of a provider or program is not an assurance or warranty of accuracy and shall not be explicitly or implicitly marketed or advertised as such.

11.5(20) Providers must apply for approval using forms prescribed by the board.

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.6(272C,543D) Acceptable distance education courses. Distance education is an education process based on the geographical separation of student and instructor. A distance education course is acceptable to meet class hour requirements if:

11.6(1) The course provides interaction. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor; and

11.6(2) Content approval is obtained from the AQB, a state licensing jurisdiction, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Nonacademic credit college courses provided by a college shall be approved by the AQB or the state licensing jurisdiction; and

11.6(3) Course delivery mechanism approval is obtained from one of the following sources:

- a. AQB-approved organizations providing approval of course design and delivery; or
- b. A college or university that qualifies for content approval pursuant to subrule 11.6(2) that awards academic credit for the distance education course; or
- c. A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

11.6(4) Distance education courses must include at least one of the following:

- a. A written examination proctored by an official approved by the college or university, or by the sponsoring organization. The term “written” in this subrule refers to an examination that may be written on paper or administered electronically on a computer or other device. Oral examinations are not acceptable.
- b. Successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter.

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.7(272C,543D) Applications for approval of programs. Applications for approval of programs must be submitted on forms prescribed by the board. All non-AQB courses are approved for 24 months, including the month of approval. AQB-approved courses are approved through the AQB expiration date, which may be longer than 24 months from the date of approval.

11.7(1) Approval must be obtained for each program separately.

11.7(2) A nonrefundable fee of \$50 must be submitted for each program except for programs that are submitted for approval by the primary provider and that have been approved by the Appraiser Qualifications Board through the Course Approval Program (CAP).

11.7(3) All required forms and attachments must be submitted for approval at least 30 days prior to the first offering of each program. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives the fee and fully completed application.

11.7(4) Application forms for non-AQB CAP courses will request information including, but not limited to, the following:

- a. Program description;
- b. Program purpose;
- c. Learning objectives that specify the level of knowledge or competency the student should demonstrate upon completing the program;
- d. Description of the instructional methods utilized to accomplish the learning objective;
- e. Identifying information for all guest speakers or instructors and such documentation as is necessary to verify compliance with the instructor qualifications described in subrule 11.5(5);
- f. Copies of all instructor and student program materials;
- g. Copies of all examinations and a description of all grading procedures;
- h. A description of the diagnostic assessment method(s) used when examinations are not given;
- i. Such information as needed to verify compliance with board rules;
- j. The name, address, telephone number, and email address for the program’s coordinator;
- k. Such other information as the board deems reasonably needed for informed decision making.

11.7(5) Application forms for courses that are AQB CAP-approved shall include information as deemed necessary for accurate documentation but may be more limited than information required in subrule 11.7(4).

11.7(6) The board shall assign each provider and program a number. This number shall be placed on all correspondence with the board, all subsequent applications by the same provider, and all certificates of attendance issued to participants.

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.8(272C,543D) Waiver of application fees. Application fees may be waived for approved programs sponsored by a federal, state, or local governmental agency when the program is offered at no cost or at a nominal cost to participants. A request for waiver of application fees should be made by the provider or certificate holder at the time the application is filed with the board.

193F—11.9(272C,543D) Authority to approve education. The executive officer has the authority to approve or deny education applications subject to the applicant's right to a hearing as provided for in rule 193F—11.13(272C,543D).

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.10(272C,543D) Appraiser request for preapproval of continuing education programs. An appraiser seeking credit for attendance and participation in a program which is to be conducted by a provider not accredited or otherwise approved by the board shall apply for approval to the board at least 15 days in advance of the commencement of the activity. The board shall approve or deny the application in writing. Application for prior approval of a continuing education activity shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title and hour-by-hour outline of the program, course or activity;
5. Credit hours requested for approval;
6. Date of program; and
7. Principal instructor(s).

193F—11.11(272C,543D) Appraiser request for postapproval of continuing education program. An appraiser seeking credit for attendance and participation in a program that was not conducted by an approved provider or approved by the licensing authority in another state or otherwise approved by the board shall submit to the board a request for credit for the program. Within 15 days after receipt of the request, the board shall advise the requester in writing whether the program is approved and the number of hours allowed. Appraisers not complying with the requirement of this rule may be denied credit for the program. Application for postapproval of a continuing education program shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title of program and description of program;
5. Credit hours requested for approval;
6. Dates of program;
7. Principal instructor(s); and
8. Verification of attendance.

193F—11.12(272C,543D) Review of provider or program. The board on its own motion or upon receipt of a complaint or negative evaluation may monitor or review any approved program or provider and, upon evidence of significant variation in the program presented from the program approved, a violation of board rules, or material misstatement or omission in the application form, may withdraw

approval of the provider or program and disallow all or any part of the approved hours granted to the provider. The provider, as a condition of approval, agrees to allow the board or its authorized representatives to monitor ongoing compliance with board rules through means including, but not limited to, unannounced attendance at programs.

193F—11.13(272C,543D) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or provider, or credit for a continuing education program, or withdrawal of approval of a continuing education program or provider, the provider or appraiser may, within 30 days of the date of mailing of the notice of denial or withdrawal, request a contested case hearing before the board, as provided in rule 193F—20.8(17A).

[ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code sections 543D.5, 543D.9 and 543D.16 and chapter 272C.

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CHAPTER 16
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193F—16.1(543D) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not certified or registered by the board pursuant to Iowa Code chapter 543D based on the unlawful practices specified in Iowa Code section 543D.21.

For the purposes of this chapter, “nonlicensee” means a person who has never been certified or registered with the board, a person who surrendered a certificate or associate registration to the board, or a person whose certificate or associate registration has been revoked by the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.2(543D) Grounds for imposing civil penalties. Grounds for issuing an order requiring compliance with Iowa Code chapter 543D or imposing civil penalties up to \$1,000 for each violation include:

16.2(1) Use of the term “certified real estate appraiser” by a person who is not certified as a real estate appraiser by the board or in compliance with the temporary practice provisions of 193F—10.2(543D).

16.2(2) Use of the term “certified real estate appraiser” by a person in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of a certificate issued by the board.

16.2(3) Use of the term “associate real estate appraiser” by a person who is not registered with the board as an associate real estate appraiser.

16.2(4) Falsely impersonating a certified real estate appraiser or associate real estate appraiser by using the certification or registration title, number or signature of a certified real estate appraiser or associate real estate appraiser, or by using the nonexistent certification or registration title, number or signature of a fictitious holder of a certificate or registration with the board.

16.2(5) Fraud, deceit, or deception, through act or omission, in connection with an application for certification or registration under Iowa Code chapter 543D, including the submission to the board of false information or documents, or the failure to disclose material information in connection with such an application for certification or registration.

16.2(6) Assisting a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by Iowa Code chapter 543D, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, unless the person assisting the certified real estate appraiser meets one or more of the following conditions:

- a. The person is certified under this chapter.
- b. The person is registered as an associate real estate appraiser and is acting under the direct supervision of a certified real estate appraiser.
- c. The person is solely providing administrative services, such as taking photographs, preparing charts, or typing reports, and is not providing real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment.
- d. The person is providing professional consultation that does not constitute real property appraisal assistance, such as the assistance of a professional engineer or certified public accountant.

16.2(7) Improperly influencing or attempting to improperly influence the development, reporting, result, or review of a real estate appraisal as provided in Iowa Code section 543D.21.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.3(543D) Investigations. The board is authorized by Iowa Code sections 17A.13(1) and 543D.21 to conduct such investigations as are needed to determine whether grounds exist to make application to the district court pursuant to Iowa Code section 543D.21 or to impose civil penalties against a person who is not certified or registered with the board. Such investigations shall conform to the procedures outlined in 193F—Chapters 8 and 19. The board is authorized to issue subpoenas and to compel the testimony of witnesses in connection with such investigations, pursuant to Iowa Code

section 543D.21. Complaint and investigatory files solely concerning persons who are not certified or registered by the board are not confidential except as provided in Iowa Code chapter 22.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.4(543D) Notice of intent to impose civil penalties.

16.4(1) The notice of the board's intent to issue an order to require compliance with Iowa Code section 543D.21 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

16.4(2) The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code section 543D.21.
- e. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.
- f. The address to which written request for hearing must be made.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.5(543D) Request for hearing.

16.5(1) Nonlicensees must request a hearing within 30 days of the date the notice is received or service is accepted. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the board office.

16.5(2) If a request for hearing is not timely made, as described in the notice, the board chairperson or the chairperson's designee may issue an order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

16.5(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees. Hearings involving nonlicensees are open to the public.

16.5(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D at any stage of the proceeding upon mutual consent of the board.

16.5(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 193F—20.30(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.6(543D) Factors to consider. Among the factors the board may consider when determining the amount of civil penalty to impose, if any, are the following:

1. The time elapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the nonlicensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.

10. The circumstances leading to the violation.
11. Whether the amount imposed will be a substantial economic deterrent to the violation.
12. The economic benefits gained by the nonlicensee as a result of the violation.
13. The severity of the violation and the risk of harm to the public.
14. The interest of the public.

193F—16.7(543D) Enforcement options. In addition or as an alternative to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent order, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to the licensing entity with regulatory authority over the nonlicensee and jurisdiction to take action against the person's real estate-related license as provided in Iowa Code section 543D.21.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A and 543D.

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CHAPTER 17
SUPERINTENDENT SUPERVISION STANDARDS AND PROCEDURES

193F—17.1(543D) Superintendent supervision standards. The level of the superintendent's supervisory scrutiny of board actions will vary depending on the nature of the board action, the surrounding circumstances, and whether the action is or may be anticompetitive. In general, the superintendent will independently evaluate both the procedures and the substantive merits of board actions.

17.1(1) Ministerial and nondiscretionary board actions. Board actions which are ministerial or nondiscretionary, as provided in 193F—subrule 1.2(2), shall be monitored to ensure that such actions are consistent with the mandates required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

17.1(2) Discretionary board actions. The superintendent shall independently assess discretionary board actions, as provided in 193F—subrule 1.2(3), to determine whether an action reflects clearly articulated state policy as the inherent, logical, or ordinary result of the exercise of authority delegated to the board by the legislature and is not the result of private interests attempting to restrain trade or otherwise pursue anticompetitive objectives that are contrary to state policy goals. Discretionary board actions which are not anticompetitive shall be monitored by the superintendent but will only be subjected to preclearance procedures if specifically requested by the board or at the superintendent's election. Discretionary board actions that are or may be anticompetitive shall require the superintendent's prior written approval.

17.1(3) Information review and gathering. When monitoring or evaluating board actions, the superintendent may rely on the information provided by the board in support of the board's actions if the superintendent is satisfied that the information is sufficient for an independent, de novo evaluation of the substantive merits of the board's action. The superintendent may supplement the board's information and gather additional information if deemed necessary or desirable.

17.1(4) Written decisions. Following the superintendent's independent evaluation of the substantive merits of board actions, the superintendent shall issue a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision. This requirement shall apply when the superintendent is requested to provide preclearance for a board action and when the superintendent evaluates a final board action upon review by or appeal to the superintendent.

[ARC 2808C, IAB 11/9/16, effective 1/1/17]

193F—17.2(543D) Procedures for superintendent supervision.

17.2(1) Ministerial or nondiscretionary board actions.

a. The superintendent's monitoring of ministerial or nondiscretionary board actions shall be flexible and designed to spot check compliance. The board shall provide any information that the superintendent requests to adequately monitor such actions. Final board action which is ministerial or nondiscretionary may be appealed to the superintendent by an aggrieved person within 20 days of the issuance of the board action. The written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period and shall specify:

- (1) The name of the person initiating the appeal;
- (2) The board action which is being appealed;
- (3) The specific facts or law alleged to be in error in the board action;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. The board may respond to the notice of appeal within 20 days of its receipt of the appeal. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(2) Preclearance. When the board seeks preclearance of a proposed board action, the board shall submit a written report which identifies the proposed action, describes the basis and support for the action, outlines the persons or markets which may be affected by the action, and attaches sufficient information

from which the superintendent can make an independent, de novo evaluation of the substantive merits of the proposed action. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(3) *Review or appeal of final, discretionary board action.*

a. Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision following hearing, a written notice of appeal or request for review shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal or requesting review;
- (2) The board action which is being appealed or for which review is requested;
- (3) The specific facts or law alleged to be in error in the board action, or other specific reason(s) why such review is sought;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. A review initiated by the superintendent shall be in writing and shall inform the board and affected persons of the nature of the superintendent's concerns. The board may respond to the superintendent's review or notice of appeal within 20 days of the board's receipt of the appeal. A person notified of a superintendent's review may respond to the superintendent's review within 20 days of the issuance of the review. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(4) *Review or appeal of contested case decision.*

a. Notwithstanding anything in these rules to the contrary, all board decisions in a contested case following hearing are proposed decisions and shall be provided to the superintendent when issued.

b. All board decisions in a contested case resolved by consent are final decisions, shall be provided to the superintendent when issued, and are subject to the review procedures set forth in subrule 17.2(3).

c. Any aggrieved party may appeal a proposed decision to the superintendent within 20 days after issuance of the proposed decision.

d. When a proposed decision is or may be anticompetitive, the board (regardless of whether the proposed decision is in favor of the state) may request review of the proposed decision.

e. The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

f. A notice of appeal or request for review must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The party or parties initiating the appeal or requesting review;
- (2) The proposed decision or order which is being appealed or for which review is requested;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought; and
- (5) The grounds for such relief.

g. A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

h. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

i. The superintendent shall issue a schedule for consideration of the review or appeal.

j. Unless otherwise ordered, within 20 days of the notice of appeal, request for review, or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with

the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

k. The record on appeal or review shall be the entire record made at hearing.

l. The superintendent shall issue a written decision as provided in subrule 17.1(4).

[ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapter 543D.

[Filed ARC 2808C (Notice ARC 2710C, IAB 9/14/16), IAB 11/9/16, effective 1/1/17]

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 18 WAIVERS AND VARIANCES FROM RULES

193F—18.1(17A,543D) Definitions. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.2(17A,543D) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.3(17A,543D) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.4(17A,543D) Criteria for waiver or variance. In response to a petition completed pursuant to rule 193F—18.6(17A,543D), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.5(17A,543D) Filing of petition. A petition for waiver must be submitted in writing to the board as follows:

18.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

18.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

18.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive officer.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.6(17A,543D) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, email address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 193F—18.4(17A,543D). This statement shall include a signed statement from

the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the past five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, email address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, email address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.7(17A,543D) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive officer, a committee of the board, or a quorum of the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.8(17A,543D) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by email or similar electronic means.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.9(17A,543D) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.10(17A,543D) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

18.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

18.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

18.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(5) *Conditions.* The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

18.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

18.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

18.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.11(17A) Interim rulings.

18.11(1) The executive officer shall, upon receipt of a petition that meets all applicable criteria established in this chapter, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

18.11(2) The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

18.11(3) The board chair or vice chair may call a special electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required, a ruling is not authorized under subrule 18.11(2) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

18.11(4) Interim rulings are effective when made, but a waiver report shall be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

18.11(5) This rule on interim rulings does not apply if the waiver or variance was filed in a contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.12(17A,543D) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.13(17A,543D) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability

of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.14(17A,543D) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.15(17A,543D) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.16(17A,543D) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.17(17A,543D) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code section 17A.9A and chapter 543D.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 19
INVESTIGATORY SUBPOENAS

193F—19.1(17A,272C,543D) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—19.2(17A,272C,543D) Investigatory subpoena procedures.

19.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

19.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 19.2(1) have been satisfied.

19.2(3) Each subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive officer or designee;
- f. The date of issuance;
- g. A return of service.

19.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

19.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

19.2(6) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to

intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

19.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of intra-agency appeal. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of intra-agency appeal until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543D.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 20 CONTESTED CASES

193F—20.1(17A,543D) Definitions. In addition to the defined terms set forth in 193F—Chapter 2, the following additional terms shall apply in the context of this chapter, except where otherwise specifically defined by law:

“Contested case” means any adversary proceeding before the board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 543D; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 543D.21; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified by rule or in the order.

“License” means a license, registration, or certificate authorized by Iowa Code chapter 543D and the board’s implementing rules related thereto.

“Party” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“Presiding officer” means the board and, when applicable, a panel of board members or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“Probable cause” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“Quorum” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.2(17A,543D) Scope and applicability of the Iowa Rules of Civil Procedure. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.3(17A,272C) Commencement of a contested case and probable cause. A contested case in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193F—20.42(543D,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.5(17A) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges shall be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.6(17A,272C) Notice of hearing.

20.6(1) Contents of notice of hearing. Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement after charges are filed;
- h. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;
- i. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193F—20.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals;
- j. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193F—20.9(17A,272C) within 20 days after service of the notice of hearing;
- k. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding;
- l. Information on whom to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter;
- m. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193F—20.21(17A,272C); and
- n. The mailing address and email address for filing with the board and notice of the option of email service as provided in subrule 20.17(6).

20.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.7(13,272C) Legal representation.

20.7(1) Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

20.7(2) The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.8(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.9(17A,272C) Form of answer.

20.9(1) Unless otherwise provided in the notice of hearing, the answer shall:

- a.* State the name, address, and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney representing that person, if any.
- b.* Specifically admit, deny, or otherwise answer all material allegations of the statement of charges.
- c.* State any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

Any allegation in the statement of charges not denied in the answer is considered admitted. Any affirmative defense not raised in the answer shall be deemed waived for purposes of any subsequent intra-agency appeal, judicial review and corresponding appeal(s).

20.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.10(17A,272C) Presiding officer.

20.10(1) The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and 272C.6(2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 20.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

20.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

20.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

20.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

20.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193F—20.31(17A) and 193F—20.32(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

20.10(6) Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.11(17A) Time requirements.

20.11(1) Time shall be computed as provided in Iowa Code section 4.1(34).

20.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.12(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means.

Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.14(17A) Disqualification.

20.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

20.14(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 20.28(9).

20.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

20.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

20.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

20.14(6) A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at

issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the board member or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193F—20.31(17A), if applicable, and seek a stay under rule 193F—20.34(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.15(17A) Consolidation—severance.

20.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

20.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.17(17A) Service and filing of pleadings and other papers.

20.17(1) When service is required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. A notice of hearing and statement of charges shall be served by the board as provided in subrule 20.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

20.17(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery, including through electronic transmission if reasonably calculated to reach the party or the party's attorney, or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

20.17(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

20.17(4) Filing—how and when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the email address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by email or other approved electronic means.

20.17(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Real Estate Appraiser Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

20.17(6) *Electronic service.* Email or similar electronic means, unless precluded by a provision of law, shall be permitted to accomplish service where such electronic transmission is reasonably calculated to reach the other party or the other party's attorney. Factors to consider in determining whether such electronic transmission is reasonably calculated to reach the other party include, but are not limited to, prior communication practices between the parties, whether consent has been given by a party or the party's attorney, and whether the presiding officer has previously entered an order authorizing service by electronic transmission. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.18(17A) Discovery.

20.18(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

20.18(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rule of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in a contested case proceeding.

20.18(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193F—20.21(17A,272C).

20.18(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

20.18(5) Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

20.18(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

20.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.19(17A,272C) Issuance of subpoenas in a contested case.

20.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a. The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

20.19(2) A request for a subpoena shall include the following information, as applicable:

- a. The name, address, email address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time, and location for production, or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.19(1) have been satisfied.

20.19(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address, and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g. The date, time, and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address, and telephone number of the executive officer or designee;
- j. The date of issuance; and
- k. A return of service.

20.19(4) The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon

the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

20.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

20.19(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

20.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

20.19(8) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of further intra-agency appeal. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of further intra-agency appeal until there is a proposed decision in the contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.20(17A) Motions.

20.20(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

20.20(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193F—20.31(17A).

20.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

20.20(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

20.20(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within ten days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding

officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193F—20.33(17A) and appeal pursuant to rule 193F—20.32(17A).
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.21(17A,272C) Prehearing conference and disclosures.

20.21(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

20.21(2) Each party shall disclose at or prior to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

20.21(3) In addition to the requirements of subrule 20.21(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

20.21(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

20.21(5) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 20.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.22(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

20.22(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

20.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

- a.* Prior continuances;

- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

20.22(3) The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.24(17A) Intervention.

20.24(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

20.24(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

20.24(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

20.24(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.25(17A,272C) Hearings. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

20.25(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

20.25(2) *Public hearing.* The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

20.25(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

20.25(4) *Order of proceedings.* Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

f. Rebuttal evidence on behalf of the state, if any.

g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193F—20.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193F—20.39(546,543D,272C).

20.25(5) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

20.25(6) *Immunity.* The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

20.25(7) *Sequestering witnesses.* The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

20.25(8) *Witness representation.* Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

20.25(9) *Depositions.* Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

20.25(10) *Witness fees.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section

622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.26(17A) Evidence.

20.26(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

20.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

20.26(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

20.26(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

20.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

20.26(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

20.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.27(17A) Default.

20.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

20.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

20.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 193F—20.32(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

20.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

20.27(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

20.27(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

20.27(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 193F—20.31(17A).

20.27(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

20.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

20.27(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193F—20.34(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.28(17A) Ex parte communication.

20.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.14(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

20.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

20.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

20.28(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 193F—20.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

20.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

20.28(6) The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 20.28(1).

20.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 193F—20.22(17A).

20.28(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

20.28(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

20.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.29(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.30(17A,272C) Final decisions, publication and client notification.

20.30(1) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

20.30(2) *Publication of decisions.* Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published on the board's website, may be published in the board's newsletter, and may be transmitted to the appropriate professional association(s), national association(s), other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

20.30(3) *Notification of clients.* Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the

board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.32(17A) Appeals and review.

20.32(1) *Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions.*

a. Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become the board's final proposed decision for purposes of 193F—subrule 17.2(4). In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final proposed decision for purposes of 193F—subrule 17.2(4) if not timely appealed by any party or reviewed by the board.

b. Appeal by party. Any adversely affected party may appeal a proposed decision rendered by a panel of the board or administrative law judge to the board within 30 days after issuance of the proposed decision. Such an appeal is required prior to seeking further intra-agency appeal as set forth in subrule 20.32(2) and 193F—subrule 17.2(4), is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

c. Review. The board may initiate review of a proposed decision rendered by a panel of the board or administrative law judge on its own motion at any time within 30 days following the issuance of such a decision.

d. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order which is being appealed;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought;
- (5) The grounds for relief.

e. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

f. Scheduling. The board shall issue a schedule for consideration of the appeal.

g. Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

h. Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

20.32(2) *Intra-agency review or appeal to the superintendent.*

a. Proposed decisions. Notwithstanding anything in these rules to the contrary, all board decisions in a contested case following hearing are proposed decisions and shall be provided to the superintendent when issued as required by 193F—subrule 17.2(4). Decisions issued by a panel of less than a quorum of the board or by an administrative law judge shall not constitute a final proposed decision of the board for purposes of this subrule and 193F—subrule 17.2(4) until the appeal and review procedures outlined in subrule 20.32(1) are exhausted and the review process is complete.

b. Procedures for intra-agency review or appeal to the superintendent. Procedures for intra-agency review or appeal by or to the superintendent in a hearing following a contested case are outlined in 193F—subrule 17.2(4) and are incorporated by reference as if set forth herein.

c. Intra-agency appeal to superintendent. No person aggrieved by a proposed decision of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in this subrule and 193F—Chapter 17. Such intra-agency appeal to the superintendent is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.33(17A) Applications for rehearing.

20.33(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

20.33(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.33(3), the applicant requests an opportunity to submit additional evidence.

20.33(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

20.33(4) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 20.17(4) apply.

20.33(5) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the application on all parties.

20.33(6) *Disposition.* An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

20.33(7) *Proceedings.* If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.34(17A) Stays of board actions.**20.34(1) When available.**

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

20.34(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

20.34(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.35(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.36(17A) Emergency adjudicative proceedings.

20.36(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

20.36(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board’s decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or email notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax or email and has provided a fax number or email address for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

20.36(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

20.36(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

20.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

20.37(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 20.33(6).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.38(17A,272C) Reinstatement.

20.38(1) The term "reinstatement" as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 20.38(5).

b. Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

20.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

20.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

20.38(4) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing.

on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

20.38(5) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 20.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or in part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

20.38(6) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not less than a majority of the board. This order will be published as provided for in subrule 20.30(2).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.39(546,543D,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive officer shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193F—20.40(546,543D,272C) shall apply.

20.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

20.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193F—20.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193F—20.32(17A).

20.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

20.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

20.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

20.39(6) Following intra-agency appeal to the superintendent as required by subrule 20.32(2) and 193F—subrule 17.2(4), judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.40(546,543D,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

20.40(1) Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 20.39(2) and 20.39(4) to 20.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

20.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

20.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;

b. Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;

c. Fully completed; and

d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

20.40(4) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.41(543D,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the banking division of the department of commerce.

20.41(1) All hearing fees and costs assessed by the board shall be paid directly to the division of banking and shall be held in a separate fund administered by the superintendent. The superintendent shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the division of banking. Distributions from the fund shall be made upon the request of the board and in the sole discretion of the superintendent. A distribution received by the board under this chapter shall be used only for expenditures related to disciplinary hearings.

a. The superintendent shall consider the following factors in exercising discretion as to whether to distribute funds to the board:

(1) The remaining funds in the board's allocated budget appropriate for disciplinary hearings in that fiscal year;

(2) The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings;

(3) Whether the board has adopted and implemented hearing cost recovery rules.

b. The superintendent shall, within 45 days from the end of the fiscal year, distribute to the board a percentage of the remaining fees and costs that is equal to the percentage of the board's total allocated budget in relation to the divisionwide total budget governed by this chapter. The fees and costs allocated back to the board shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to the board shall be applied to the costs incurred for prosecution of contested cases which could result in disciplinary action.

20.41(2) The board may assess the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal or request for review, to the full board from a decision rendered by a panel of the board or administrative law judge or by or to the superintendent from a proposed decision of the board, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.
- c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.
- d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

20.41(3) When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

20.41(4) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within ten days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

20.41(5) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

20.41(6) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section

272C.3(2)“a.” However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.42(543D,272C) Settlement after notice of hearing.

20.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board’s executive officer, or the board chair or chair’s designee.

20.42(2) The board chair or chair’s designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

20.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent’s initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193F—20.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair’s designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

20.42(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

20.42(5) If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 21

DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR
NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

193F—21.1(252J) Nonpayment of child support. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

21.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.1(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

21.1(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the licensee or applicant.

21.1(4) Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

21.1(5) All board fees for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 252J.

21.1(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.1(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—21.2(261) Nonpayment of student loan. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

21.2(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

21.2(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

21.2(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

21.2(4) Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

21.2(5) All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 261.

21.2(6) In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.2(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—21.3(272D) Nonpayment of state debt. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

21.3(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.3(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

21.3(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the licensee or applicant.

21.3(4) Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

21.3(5) All board fees required for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

21.3(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.3(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 22
PETITION FOR RULE MAKING

193F—22.1(17A) Petition for rule making. Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Petitioner) for the
(adoption, amendment, or repeal) of rules
relating to (State subject matter).

}

PETITION FOR
RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 193F—22.4(17A).

22.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

22.1(2) The board may deny a petition because it does not substantially conform to the required form.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive officer of the board at the board's offices.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.4(17A) Board consideration.

22.4(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

22.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board emails or delivers the required notification to petitioner.

22.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapter 17A.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 23 DECLARATORY ORDERS

193F—23.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Petitioner) for
Declaratory Order on (Cite provisions
of law involved).



PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
7. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by rule 193F—23.7(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.2(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 193F—23.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by email or similar electronic means.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.3(17A) Intervention.

23.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

23.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

23.3(3) A petition for intervention shall be filed at the board's office. Such a petition is deemed filed when it is received by the office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Original Petitioner)
for Declaratory Order on (Cite provisions
of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names, addresses, and email addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, email address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.4(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.5(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive officer of the board at the board's offices.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.6(17A) Service and filing of petitions and other papers.

23.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

23.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

23.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 193F—20.17(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.7(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments

from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.8(17A) Action on petition.

23.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, the board shall, in writing, do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

b. Set the matter for specified proceedings;

c. Agree to issue a declaratory order by a specified time; or

d. Decline to issue a declaratory order, stating the reasons for its action.

23.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 193F—20.1(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.9(17A) Refusal to issue order.

23.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(5) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

23.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

23.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance; the name of petitioner; the names of intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be emailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapter 17A.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 24
SALES AND LEASES OF GOODS AND SERVICES

193F—24.1(68B) Selling or leasing of goods or services by members of the board. The board members shall not sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

24.1(1) Conditions of consent for members. Consent shall be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351—subrule 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351—subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

24.1(2) Authorized sales and leases.

a. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

b. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case, as provided, for instance, in the code of administrative judicial conduct at 481—Chapter 15. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The board intends that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

c. Individual application and approval are not required for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

24.1(3) Application for consent. Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, as provided in 351—subrule 6.11(3), unless the sale or lease is specifically allowed in subrule 24.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications must conform to the requirements of 351—subrule 6.11(3).

24.1(4) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting

consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351—subrule 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351—subrule 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 25
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

193F—25.1(17A,22) Definitions. As used in this chapter:

“*Agency*” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.3(17A,22) Requests for access to records.

25.3(1) Location of record. A request for access to a record should be directed to the agency. The request shall be directed to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

25.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

25.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, email address, and telephone number of the person requesting the information to facilitate the board’s response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

25.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of

the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193F—25.4(17A,22) and other applicable provisions of law.

25.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

25.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

25.3(7) *Fees.*

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193F—25.3(17A,22).

25.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

25.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

25.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

25.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

25.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

25.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

25.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

25.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

25.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed or when the custodian receives a request for access to the record by a member of the public.

25.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

25.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the agency at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.8(17A,22) Disclosures without the consent of the subject.

25.8(1) Open records are routinely disclosed without the consent of the subject.

25.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 193F—25.9(17A,22) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.
- h.* To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

25.8(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

25.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.9(17A,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

25.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

25.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

25.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

25.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

25.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

25.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

25.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

25.9(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

25.9(9) Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

25.9(10) Name and license numbers of licensees are routinely disclosed to the public upon request. [ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.10(17A,22) Consensual disclosure of confidential records.

25.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193F—25.7(17A,22).

25.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.11(17A,22,546) Release to subject.

25.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

e. As otherwise authorized by law.

25.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.12(17A,22) Availability of records.

25.12(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

25.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal related information in confidential personnel records of board staff and board members. (Iowa Code section 22.7(11))

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

d. Information relating to the contents of an examination for licensure.

e. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

f. Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

g. References for examination or licensure applicants. (Iowa Code section 22.7(18))

h. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

i. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “d.”

j. Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

k. Email addresses of licensees when solicited for the purpose of mass communication. An email address may be open to the public when given as part of a specific, individual email correspondence.

25.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 193F—25.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.13(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193F—25.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The board’s records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information may also be placed on the board’s website or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

25.13(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

25.13(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

25.13(3) The following information regarding licensee disciplinary proceedings:

- a. Formal charges and notices of hearing.
- b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c. Final written decisions, including informal stipulations and settlements.

25.13(4) Licensure. Records pertaining to licensure by examination may include:

- a. Transcripts from education programs. This information is collected pursuant to Iowa Code section 543D.9.
- b. Applications for examination. This information is collected pursuant to Iowa Code section 543D.7.
- c. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code section 543D.12.
- d. Examination scores. This information is collected pursuant to Iowa Code section 543D.8.
- e. Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

25.13(5) In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

- a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code section 543D.10.
- b. Verification of licensure by another board. This information is collected pursuant to Iowa Code section 543D.11.
- c. Verification of experience and other licensure qualifications.

25.13(6) Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

25.13(7) Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193F—25.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193F—25.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

25.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's website.

25.14(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system, although minutes and other information may be found on the board's website.

25.14(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's website.

25.14(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraphs 25.12(2) “b” and “c.” These records may contain information about individuals collected under the authority of Iowa Code section 543D.17.

25.14(5) Policy manuals. The agency employees’ manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

25.14(6) Other records. All other records that are not exempted from disclosure by law.

25.14(7) Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

25.14(8) Declaratory orders.

25.14(9) Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

25.14(10) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

25.14(11) General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

25.14(12) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

25.14(13) All other records that are not confidential by law.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.15(17A,22) Data processing systems. All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person’s name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.17(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to

provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

25.17(1) *License and examination applicants.* License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

25.17(2) *Home address.* License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The board will honor the “safe at home” address issued by any state’s program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person’s physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its website and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

25.17(3) *License renewal.* Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

25.17(4) *Investigations.* Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4) but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 22, 252J and 261.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 10
INTRASTATE GAS AND UNDERGROUND GAS STORAGE
[Prior to 10/8/86, Commerce Commission[250]]

199—10.1(479) General information.

10.1(1) Authority. The standards relating to intrastate gas and underground gas storage in this chapter are prescribed by the Iowa utilities board (board) pursuant to Iowa Code section 479.17.

10.1(2) Purpose. The purpose of this chapter is to establish standards for a petition for a permit to construct, maintain, and operate an intrastate gas pipeline and for the underground storage of gas. In addition, the rules in this chapter set forth safety standards for the construction, maintenance, and condition of pipelines, underground storage facilities, and equipment used in connection with pipelines and facilities.

10.1(3) Definitions. Technical terms not defined in this chapter shall be as defined in the appropriate standard adopted in rule 199—10.12(479). For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meanings indicated below:

“*Approximate right angle*” means within 5 degrees of a 90 degree angle.

“*Board*” means the utilities board within the utilities division of the department of commerce.

“*Multiple line crossing*” means a point at which a proposed pipeline will either overcross or undercross an existing pipeline.

“*Permit*” means a new, amended, or renewal permit issued after appropriate application to and determination by the board.

“*Pipeline*” means any pipe, pipes, or pipelines used for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Pipeline company*” means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Renewal permit*” means the extension and reissuance of a permit after appropriate application to and determination by the board.

“*Underground storage*” means storage of gas in a subsurface stratum or formation of the earth.

10.1(4) Railroad crossings. Where these rules call for the consent or other showing of right from a railroad for a railroad crossing, an affidavit filed by a petitioner which states that proper application for approval of railroad crossing has been made, that a one-time crossing fee has been paid as provided for in rule 199—42.3(476), and that 35 days have passed since mailing of the application and payment with no claim of special circumstance or objection from the railroad will be accepted as a showing of consent for the crossing.

199—10.2(479) Petition for permit.

10.2(1) A petition for a permit shall be made to the board upon the form prescribed and shall include all required exhibits. The petition shall be considered as filed upon receipt at the office of the board. An original and two copies of the petition and exhibits shall be filed, unless the petition and exhibits are filed electronically pursuant to the board’s electronic filing rules at 199—Chapter 14. Required exhibits shall be in the following form:

a. Exhibit A. A legal description showing, at minimum, the general direction of the proposed route through each quarter section of land to be crossed, including township and range and whether on private or public property, public highway or railroad right-of-way, together with such other information as may be deemed pertinent. Construction deviation of 660 feet (one-eighth mile) from proposed routing will be permitted.

If it becomes apparent that there will be deviation of greater than 660 feet (one-eighth mile) in some area from the proposed route as filed with the board, construction of the line in that area shall be suspended. Exhibits A, B, E, and F reflecting the deviation shall be filed, and the procedures hereinafter set forth to be followed upon the filing of a petition for permit shall be followed.

b. Exhibit B. Maps showing the proposed routing of the pipeline. Strip maps will be acceptable. Two copies of such maps shall be filed. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side it is on. Multiple pipelines on the same right-of-way shall be indicated.

(2) The name of the county, county and section lines, and section, township and range numbers.

(3) The location and identity of public roads, railroads, major streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities, and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

c. Exhibit C. A showing on forms prescribed by this board of engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline, its approximate length, diameter and the name and location of each railroad and primary highway and the number of secondary highways to be crossed, if any, and such other information as may be deemed pertinent.

d. Exhibit D. Satisfactory attested proof of solvency and financial ability to pay damages in the sum of \$250,000 or more; or surety bond satisfactory to this board in the penal sum of \$250,000 with surety approved by this board, conditioned that the petitioner will pay any and all damages legally recovered against it growing out of the operation of its pipeline or gas storage facilities in the state of Iowa; security satisfactory to this board as a guarantee for the payment of damages in the sum of \$250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000.

e. Exhibit E. Consent or other showing of right of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when such consent is obtained prior to filing of the petition and hearing shall be filed with the petition.

If the exact and specific route is uncertain at the time of petition, a statement shall be made by petitioner that all consents or other showing of right will be obtained prior to construction and copies filed with this board.

f. Exhibit F. This exhibit shall contain the following:

(1) A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.

(2) A general statement covering each of the following topics: the nature of the lands, waters, and public or private facilities to be crossed; the possible use of alternative routes; the relationship of the proposed pipeline to present and future land use and zoning ordinances; and the inconvenience or undue injury which may result to property owners as a result of the proposed project.

(3) For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.

g. Exhibit G. If informational meetings were required, an affidavit that such meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.

h. Exhibit H. This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. However, this exhibit must be in final form before a hearing is scheduled. It shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought and for each such property:

(1) The legal description of the property.

(2) The legal description of the desired easement.

(3) A specific description of the easement rights being sought.

(4) The names and addresses of the owners of record and parties in possession of the property.

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the line to the rights being sought.

i. Exhibit I. If pipeline construction on agricultural land as defined in 199—subrule 9.1(3) is proposed, a land restoration plan shall be prepared and filed as provided in rule 199—9.2(479,479A,479B).

j. Underground storage. If permission is sought to construct, maintain and operate facilities for underground storage of gas, the petition shall include the following information, in addition to that stated above:

(1) A description of the public or private highways, grounds and waters, streams and private lands of any kind under which the storage is proposed, together with a map.

(2) Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the facilities.

k. Other exhibits. The board may require filing of additional exhibits if further information on a particular project is deemed necessary.

10.2(2) Petitions proposing new pipeline construction on an existing easement where the company has previously constructed a pipeline shall include a statement indicating whether any unresolved damage claims remain from the previous pipeline construction, and if so shall provide the name of each landowner or tenant, a legal description of the property involved, and the status of proceedings to settle the claim.

A petition for permit proposing a new pipeline construction on an existing easement where the company has previously constructed a pipeline will not be acted upon by the board if a damage claim from the installation of its previous pipeline has not been determined by negotiation, arbitration, or court action. This paragraph will not apply if the damage claim is under litigation or arbitration.

10.2(3) Statement of damage claims.

a. A petition for permit proposing new pipeline construction will not be acted upon by the board if the company does not have on file with the board a written statement as to how damages resulting from the construction of the pipeline shall be determined and paid.

The statement shall contain the following information: the type of damages which will be compensated for, how the amount of damages will be determined, the procedures by which disputes may be resolved, and the manner of payment.

The statement shall be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

b. A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 479.5. Where no informational meeting is required, a copy shall be provided to each affected party prior to entering into negotiations for payment of damages.

c. Nothing in this rule shall prevent a party from negotiating with the company for terms which are different, more specific, or in addition to the statement filed with the board.

This rule is intended to implement Iowa Code sections 479.5, 479.17, 479.26, 479.42, and 479.43.

199—10.3(479) Informational meetings. Informational meetings shall be held for any proposed pipeline project over five miles in length, including both the current project and future anticipated extensions, and which is to be operated at a pressure of over 150 pounds per square inch. A separate informational meeting shall be held in each county in which real property or rights therein would be affected. Informational meetings shall be held not less than 30 days nor more than two years prior to the filing of the petition for pipeline permit and shall comply with the following:

10.3(1) Facilities. Prospective petitioners for a permit shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines, Chapter 4, where such a building or facility is reasonably available.

10.3(2) Location. The informational meeting location shall be reasonably accessible to all persons, companies or corporations which may be affected by the granting of a permit.

10.3(3) Route deviation. Prospective petitioners desiring a route corridor to permit minor route deviations beyond the proposed permanent right of way width shall include as affected all parties within the desired corridor. Prospective petitioners may also provide notice to affected parties on alternative route corridors.

10.3(4) Notices. Announcement by mailed and published notice of the meeting shall be given to affected parties of interest in real estate. Affected parties of interest in real estate are those persons, companies or corporations listed on the tax assessment roles as responsible for payment of real estate taxes and parties in possession of or residing on the property over which the prospective petitioner will seek easements.

a. The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the board; a map showing the route of the proposed project; a description of the process used by the board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and designation of the time and place of the meeting; and contain the following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)725-7300 in advance of the scheduled date to request that appropriate arrangements be made. Mailed notices shall also include a copy of the statement of damage claims as required by 10.2(3) "b."

b. The prospective petitioner shall cause a written copy of the meeting notice to be served, by certified United States mail with return receipt requested, on all affected parties whose address is known. The certified meeting notice shall be deposited in the U.S. mails not less than 30 days prior to the date of the meeting.

c. The prospective petitioner shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in the county at least one week and not more than three weeks prior to the date of the meeting. Publication shall be considered as notice to affected parties whose residence is not known provided a good-faith effort to notify can be demonstrated by the pipeline company.

10.3(5) Personnel. The prospective petitioner shall provide qualified personnel to speak for it in matters relating to the following:

- a.* Service requirements and planning which have resulted in the proposed project.
- b.* When the pipeline will be constructed.
- c.* In general terms, the elements involved in pipeline construction.
- d.* In general terms, the rights which the prospective petitioner will seek to acquire through easements.
- e.* Procedures to be followed in contacting affected parties for specific negotiations in acquiring voluntary easements.
- f.* Methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount for each component.
- g.* Manner in which voluntary easement payments are made, including discussion of conditional easements, signing fees and time of payment.
- h.* Other factors or damages not included in the easement for which compensation is made, including features of interest to affected parties but not limited to computation of amounts and manner of payment.

10.3(6) Coordinating with board. The date, time, and location of the informational meeting shall be selected after consultation with the board to allow for scheduling of presiding officers.

This rule is intended to implement Iowa Code section 479.5.

[Editorial change: IAC Supplement 12/29/10]

199—10.4(479) Notice of hearing.

10.4(1) When a proper petition for permit is received by the board, it shall be docketed for hearing and the petitioner shall be advised of the time and place of hearing, except as provided for in rule 199—10.8(479). Petitioner shall also be furnished copies of the official notice of hearing which petitioner shall cause to be published once each week for two consecutive weeks in a newspaper of general circulation in each county in or through which construction is proposed. The second publication shall be not less than 10 nor more than 30 days prior to the date of the hearing. Proof of such publication shall be filed prior to or at the hearing.

The published notice shall include a map showing either the pipeline route or the area affected by underground gas storage, or a telephone number and an address through which interested persons can obtain a copy of a map from petitioner at no charge. If a map other than that filed as Exhibit B will be published or provided, a copy shall be filed with the petition.

10.4(2) If a petition for permit seeks the right of eminent domain, petitioner shall, in addition to the published notice of hearing, serve a copy of the notice of hearing to the owners and parties in possession of lands over which eminent domain is sought. A copy of the Exhibit H filed with the board for the affected property shall accompany the notice. Service shall be by certified United States mail, return receipt requested, addressed to their last known address, and this notice shall be mailed not later than the first day of publication of the official notice of hearing on the petition. Not less than five days prior to the date of the hearing, the petitioner shall file with the board a certificate of service showing all addresses to which notice was sent by certified mail and the date of the mailing.

10.4(3) If a petition does not seek the right of eminent domain, but all required interests in private property have not yet been obtained, a copy of the notice of hearing shall be served upon the owners and parties in possession of those lands. Service shall be by ordinary mail, addressed to the last known address, mailed not later than the first day of publication of the official notice. A copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all parties to which it was mailed and the date of mailing, shall be filed with the board not less than five days prior to the hearing.

199—10.5(479) Objections. All whose rights or interests may be affected by the object of a petition may file written objection thereto. Such written objection shall be filed with the secretary of this board not less than five days prior to date of hearing. This board may, for good cause shown, permit filing of objections less than five days prior to hearing, but in such event petitioner shall be granted a reasonable time to meet such objections.

199—10.6(479) Hearing. Hearing shall be not less than 10 or more than 30 days from the date of last publication of notice of hearing.

Petitioner shall be represented by one or more duly authorized representatives or counsel or both. This board may examine the proposed route of the pipeline or location of the underground storage facilities which are the object of the petition or may cause examination to be made on its behalf by an engineer of its selection. One or more members of this board or a duly appointed administrative law judge shall consider the petition and any objections filed thereto and may hear testimony deemed appropriate. One or more petitions may be considered at the same hearing. Petitions may be consolidated. Hearing shall be held in the office of this board or at any other place within the state of Iowa as this board may designate. Any hearing permitted by these rules in which there are no objections, interventions or material issues in dispute may be conducted by telephonic means. Notice of the telephonic hearings shall be given to parties within a reasonable time prior to the date of hearing.

199—10.7(479) Pipeline permit. If after hearing and appropriate findings of fact it is determined a permit should be granted, a pipeline permit shall be issued. Otherwise the petition shall be dismissed with or without prejudice. Where proposed construction has not been established definitely, the permit will be issued on the route or location as set forth in the petition, subject to deviation of up to 660 feet (one-eighth mile) on either side of the proposed route. If the proposed construction is not completed within two years from the date of issue, subject to extension at the discretion of the board, the permit

shall be void and of no further force or effect. Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline shall be filed with the board.

A pipeline permit shall normally expire 25 years from date of issue. No permit shall ever be granted for a longer period than 25 years.

199—10.8(479) Renewal permits. A petition for renewal of an original or previously renewed pipeline permit may be filed at any time subsequent to issuance of the permit and prior to expiration of the permit. The petition shall be made on the form prescribed by the board. Instructions for the petition are included as a part of the form. The procedure for petition for permit shall be followed with respect to publication of notice, objections, and assessment of costs. If review of the petition finds unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the matter will be set for hearing. If a hearing is not required, a renewal permit will be issued upon the filing of the proof of publication required by 199—10.4(479). Renewal permits shall normally expire 25 years from date of issue. No permit shall be granted for a period longer than 25 years. The same procedure shall be followed for subsequent renewals.

This rule is intended to implement Iowa Code sections 476.2 and 479.23.

199—10.9(479) Amendment of permits.

10.9(1) An amendment of pipeline permit by the board is required in any of the following circumstances:

- a. Construction of a pipeline paralleling an existing line of petitioner;
- b. Extension of an existing pipeline of petitioner by more than 660 feet (one-eighth mile);
- c. Relocation of an existing pipeline of petitioner which:
 - (1) Relocates the pipeline more than 660 feet (one-eighth mile) from the route approved by the board; or
 - (2) Involves relocation requiring new or additional interests in property for five miles or more of pipe to be operated at over 150 psig. Informational meetings as provided for by rule 199—10.3(479) shall be held for these relocations.
- d. Contiguous extension of an underground storage area of petitioner; or
- e. Modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the pipeline permit.

10.9(2) Petition for amendment. The petition for amendment of an original or renewed pipeline permit shall include the docket number and issue date of the permit for which amendment is sought and shall clearly state the purpose of the petition. If the petition is for construction of additional pipeline facilities or expansion of an underground storage area, the same exhibits as required for a petition for permit shall be attached.

The applicable procedures for petition for permit, including hearing, shall be followed. Upon appropriate determination by this board, an amendment to the permit will be issued. Such amendment shall be subject to the same conditions with respect to completion of construction within two years and the filing of final routing maps as attached to pipeline permits.

This rule is intended to implement Iowa Code sections 476.2 and 479.23.

199—10.10(479) Fees and expenses.

10.10(1) Permit expenses. The petitioner shall pay the actual unrecovered cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting a pipeline permit action.

Any moneys collected by the board from other sources for chargeable activities will be deducted from billings for actual expenses submitted to the petitioner.

10.10(2) Construction inspection. The petitioner shall reimburse the board for the actual unrecovered expenses incurred due to inspection of pipeline construction or testing activities following from a permit action.

Any moneys collected by the board from other sources for chargeable activities will be deducted from billings for actual expenses submitted to the petitioner.

10.10(3) Annual inspection fee. A pipeline company shall pay an annual inspection fee on all pipelines under permit of 50 cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state of Iowa. The fee shall be paid for the calendar year in advance between January 1 and February 1 of each year. When new pipeline subject to the fee is installed, the fee shall be paid beginning the following calendar year. Pipelines removed from service shall remain subject to the fee until the calendar year following the year the board is notified of the removal from service in accordance with rule 199—10.18(479).

199—10.11(479) Inspections. This board shall from time to time examine the construction, maintenance and condition of pipelines, underground storage facilities and equipment used in connection with pipelines or facilities in the state of Iowa to determine if the same are unsafe or dangerous and whether they comply with the appropriate standards of pipeline safety. One or more members of this board, or one or more duly appointed representatives of the board may enter upon the premises of any pipeline company within the state of Iowa for the purpose of making the inspections.

199—10.12(479) Standards for construction, operation and maintenance.

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

- a. 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through May 1, 2019.
- b. 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through May 1, 2019.
- c. 49 CFR Part 199, "Drug and Alcohol Testing," as amended through May 1, 2019.
- d. ASME B31.8 - 2016, "Gas Transmission and Distribution Piping Systems."
- e. 199—Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction."
- f. At railroad crossings, 199—42.7(476), "Engineering standards for pipelines."

Conflicts between the standards established in paragraphs 10.12(1)"a" through "f" or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

10.12(2) If review of Exhibit C, or inspection of facilities which are the subject of a permit petition, finds noncompliance with the standards adopted in this rule, no final action will be taken by the board on the petition without a satisfactory showing by the petitioner that the noncompliance has been or will be corrected.

10.12(3) Pipelines in tilled agricultural land shall be installed with a minimum cover of 48 inches.
[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 2711C, IAB 9/14/16, effective 10/19/16; ARC 4380C, IAB 3/27/19, effective 5/1/19]

199—10.13(479) Minimum safety standards. Rescinded IAB 2/21/90, effective 3/28/90.

199—10.14(479) Crossings of highways, railroads, and rivers.

10.14(1) Iowa Code chapter 479 gives the Iowa utilities board primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction for crossings of highway or railroad right-of-way, or rivers or other bodies of water.

Except for other than approximate right angle crossings of highway or railroad right-of-way, the approval of other authorities need not be obtained prior to petitioning the board for a pipeline permit. It is recommended the appropriate other authorities be contacted well in advance of construction to determine what restrictions or conditions may be placed on the crossing, and to obtain information on any proposed reconstruction or relocation of existing facilities which may impact the routing of the pipeline.

10.14(2) Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on such right-of-way, shall not be constructed unless a showing of consent by the appropriate authority has been provided by the petitioner as required in paragraph 10.2(1) “e.”

199—10.15(479) River crossings. Rescinded IAB 3/6/91, effective 4/10/91.

199—10.16(479) When a permit is required. A pipeline permit shall be required for any pipeline which will be operated at a pressure of over 150 pounds per square inch gage or which, regardless of operating pressure, is a transmission line as defined in ASME B31.8 or 49 CFR Part 192. Questions on whether a pipeline requires a permit are to be resolved by the board.

199—10.17(479) Reports to federal agencies.

10.17(1) Upon submission of any incident, annual, or other report to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, a copy of the report shall be filed with the board. The board shall also be advised of any telephonic incident report made.

10.17(2) In addition to incident reports required by 49 CFR Part 191, the board shall be notified of any incident or accident where the economic damage exceeds \$15,000 or which results in loss of service to 50 or more customers.

10.17(3) Utilities operating in other states shall provide to the board data for Iowa only.

10.17(4) The board shall be notified, as soon as practical, of any reportable incident by email to the duty officer at dutyofficer@iub.iowa.gov or, if email is not available, by calling the board duty officer at (515)745-2332.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 1623C, IAB 9/17/14, effective 10/22/14]

199—10.18(479) Reportable changes to pipelines under permit.

10.18(1) The board shall receive prior notice of any of the following actions affecting a pipeline under permit:

- a. Abandonment or removal from service.
- b. Relocation of more than 300 feet from the original alignment, or any relocation that would bring the pipeline within 300 feet of an occupied residence. Relocations of 660 feet (one-eighth mile) or more shall require the filing of a petition for permit.
- c. Pressure test, uprating, or increase in operating pressure.
- d. Change in product being transported.
- e. Replacement of a pipeline or significant portion thereof, not including short repair sections of pipe at least as strong as the original pipe.
- f. Extensions of existing pipelines by 660 feet (one-eighth mile) or less.

10.18(2) The notice shall include the docket and permit numbers of the pipeline, the location involved, a description of the proposed activity, anticipated dates of commencement and completion, revised maps and technical specifications, where appropriate, and the name and telephone number of a person to contact for additional information.

199—10.19(479) Sale or transfer of permit.

10.19(1) No permit shall be sold without prior written approval of the board. A petition for approval shall be jointly filed by the buyer and seller, shall include assurances that the buyer is authorized to transact business in the state of Iowa; is willing and able to construct, operate, and maintain the pipeline in accordance with these rules; and if the sale is prior to completion of construction of the pipeline shall show that the buyer has the financial ability to pay up to \$250,000 in damages.

10.19(2) No transfer of pipeline permit prior to completion of pipeline construction shall be effective until the person to whom the permit was issued files notice with the board of the transfer. The notice shall include the date of the transfer and the name and address of the transferee.

10.19(3) The board shall receive notice from the transferor of any other transfer of a pipeline permit after completion of construction.

For the purposes of this rule, reassignment of a pipeline permit as part of a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer.

199—10.20(479) Amendments to rules. Rescinded IAB 6/25/03, effective 7/30/03.

These rules are intended to implement Iowa Code sections 476.2, 479.5, 479.17, 479.23, 479.26, 479.42, 479.43 and 546.7.

[Filed 7/19/60; amended 8/23/62, 11/14/66]

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CHAPTER 19
SERVICE SUPPLIED BY GAS UTILITIES
[Prior to 10/8/86, Commerce Commission [250]]

199—19.1(476) General information.

19.1(1) *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

Iowa Code chapter 479 provides that the Iowa utilities board shall have full authority and power to promulgate rules as it deems proper and expedient in the supervision of the transportation or transmission and underground storage of gas within the state of Iowa.

The application of the rules in this chapter to municipally owned utilities furnishing gas is limited by Iowa Code section 476.1B.

19.1(2) *Application of rules.* The rules shall apply to any gas utility operating within the state of Iowa as defined in Iowa Code chapter 476 and shall supersede any tariff on file with this board which is in conflict with these rules. These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476). The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions. These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

19.1(3) *Definitions.* The following words and terms, when used in these rules shall have the meaning indicated below:

The abbreviations used, and their meanings, are as follows:

Btu—British thermal unit

LP-Gas—Liquefied Petroleum Gas

psig—Pounds per Square Inch, Gauge

W.C.—Water Column

“*Appliance*” refers to any device which utilizes gas fuel to produce light, heat or power.

“*Board*” means the Iowa utilities board.

“*Complaint*” as used in these rules is a statement or question by anyone, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or utility failure to fulfill an obligation.

“*Cubic foot*” of gas has the following meanings:

1. Where gas is supplied and metered to customers at the pressure (as defined in 19.7(2)) normally used for domestic customers’ appliances, a cubic foot of gas shall be that quantity of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot, except that where a temperature compensated meter is used, the temperature base shall be 60°F.

2. When gas is supplied to customers at other than the pressure in (1) above, the utility shall specify in its rules the base for measurement of a cubic foot of gas (see 19.2(4) “*c*”(6)). Unless otherwise stated by the utility, such cubic foot of gas shall be that quantity of gas which, at a temperature of 60°F and a pressure of 14.73 pounds per square inch absolute, occupies one cubic foot.

3. The standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas, saturated with water vapor, which, at a temperature of 60°F and a pressure of 30 inches of mercury, occupies one cubic foot. (Temperature of mercury = 32°F acceleration due to gravity = 32.17 ft. per second per second density = 13.595 grams per cubic centimeter.)

“*Customer*” means any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the gas service or heat from the gas utility.

“Delinquent” or *“delinquency”* means an account for which a service bill or service payment agreement has not been paid in full on or before the last day for timely payment.

“Gas,” unless otherwise specifically designated, means manufactured gas, natural gas, other hydrocarbon gases, or any mixture of gases produced, transmitted, distributed or furnished by any gas utility.

“Gas plant” means all facilities including all real estate, fixtures and property owned, controlled, operated or managed by a gas utility for the production, storage, transmission and distribution of gas and heat.

“Heating and calorific values.” The following values shall be used:

1. *“British thermal unit”* (Btu) is the quantity of heat that must be added to one avoirdupois pound of pure water to raise its temperature from 58.5°F to 59.5°F under standard pressure.

2. *“Dry calorific value”* of a gas (total or net) is the value of the total or the net calorific value of the gas divided by the volume of dry gas in a standard cubic foot.

NOTE: The amount of dry gas in a standard cubic foot is .9826 cubic foot.

3. *“Net calorific value”* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air, and products of combustion being 60°F and all water formed by the combustion reaction remaining in the vapor state.

NOTE: The net calorific value of a gas is its total calorific value minus the latent heat of evaporation at standard temperature of the water formed by the combustion reaction.

4. *“Therm”* means 100,000 British thermal units.

5. *“Total calorific value”* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air and products of combustion being 60°F and all water formed by the combustion reaction condensed to the liquid state.

“Interruption of service” means any disturbance of the gas supply whereby gas service to a customer cannot be maintained.

“Loss factor” as used in rule 199—19.10(476) means test-year purchases less test-year sales. A five-year average of purchases less sales may be used if the test year is determined by the board to be abnormal.

“Main” means a gas pipe, owned, operated, or maintained by a utility, which is used for the purpose of transmission or distribution of gas, but does not include “service line”.

“Meter,” without other qualification, shall mean any device or instrument which is used by a utility in measuring a quantity of gas.

“Meter shop” is a shop where meters are inspected, repaired and tested, and may be at a fixed location or may be mobile.

“Pressure,” unless otherwise stated, is expressed in pounds per square inch above atmospheric pressure, i.e., gauge pressure (abbreviation-psig).

“Rate-regulated utility” means any utility as defined in the definition of “utility” below which is subject to rate regulation provided for in Iowa Code chapter 476.

“Service line” means a distribution line that transports gas from a common source of supply to a customer meter or the connection to a customer’s piping, whichever is farther downstream, or the connection to a customer’s piping if there is not a customer meter. A customer meter is the meter that measures the transfer of gas from a utility to a customer.

“Tap” or *“town border station”* means the delivery point or measuring station at which a gas distribution utility receives gas from a natural gas transmission company.

“Tariff” means the entire body of rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc., adopted and filed with the board by a gas utility in fulfilling its role of furnishing gas service.

“Timely payment” is a payment on a customer’s account made on or before the date shown on a current bill for service or on a form which records an agreement between the customer and a utility for

a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

“Utility” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing gas or heat to the public for compensation.

199—19.2(476) Records, reports, and tariffs.

19.2(1) Location and retention of records. Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of Chapter 18 of the board’s rules, Utility Records.

19.2(2) Tariffs to be filed with the board. The schedules of rates and rules of rate-regulated gas utilities shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, rules, or contracts primarily concerned with a rate schedule with the board, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board’s duties upon request to do so by the board.

19.2(3) Form and identification. All tariffs shall conform to the following rules:

a. The tariff shall be printed, typewritten or otherwise reproduced on 8½- × 11-inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency, the format of sheets of tariff as filed with the board may be the same format as is required by the federal agency provided that the rules of the board as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words “Gas Tariff Filed with Board” shall apply in the modification of the federal agency format for the purposes of filing with this board. Pursuant to 199—subrule 14.5(5), tariffs filed electronically shall be formatted in accordance with this rule.

b. The title page of every tariff and supplement shall show:

(1) The first page shall be the title page which shall show:

(Name of Public Utility)

Gas Tariff

Filed with

Iowa Utilities Board

(date)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced, for example:

Tariff No. _____

Supersedes Tariff No. _____

(3) When a new part of a tariff eliminates an existing part of a tariff it shall so state and clearly identify the part eliminated.

(4) Any tariff modifications as defined in “3” above replacing tariff sheets shall be marked in the right margin with symbols as herein described to indicate the place, nature and extent of the change in text.

| <i>Symbol</i> | <i>Meaning</i> |
|---------------|-----------------------------------------------------------------|
| (C) | A change in regulation |
| (D) | A discontinued rate, treatment or regulation |
| (I) | An increased rate or new treatment resulting in increased rate |
| (N) | A new rate, treatment or regulation |
| (R) | A reduced rate or new treatment resulting in a reduced rate |
| (T) | A change in text but no change in rate, treatment or regulation |

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following information:

(1) Name of utility under which shall be set forth the words “Filed with Board.” If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date (to be left blank by rate-regulated utilities).

d. All sheets except the title page shall have the following form:

| | |
|--------------------------|-----------------------------------------|
| (Company Name) | (Part identification) |
| Gas Tariff | (This sheet identification) |
| Filed with board | (Canceled sheet identification, if any) |
| | (Content of tariff) |
| Issued: (Date) | Effective: |
| Issued by: (Name, title) | (Proposed Effective Date:) |

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date will be left blank by rate-regulated utilities and shall be determined by the board.

The utility may propose an effective date.

19.2(4) Content of tariffs. A tariff filed with the board shall contain:

a. A table of contents containing a list of rate schedules and other sections in the order in which they appear showing the sheet number of the first page of each section.

b. All rates of utilities subject to rate regulation for service with indication of each rate for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. All rates should be separated into “gas” and “nongas” components, and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility’s periodic review of gas procurement practices rule (199—19.11(476)) and PGA (rule 199—19.10(476)) proceeding. The nongas components will be established through rate case proceedings under Iowa Code section 476.3 or 476.6. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

Customer charges for all special services relating to providing the basic utility service including, but not limited to, reconnect charge and different categories of service calls shall be specified.

c. A copy of the utility’s rules, or terms and conditions, describing the utility’s policies and practices in providing service shall include:

(1) A statement as to the equivalent total heating value of the gas in Btu’s per cubic foot on which their customers are billed. If necessary, this may be listed by district, division or community.

(2) The list of the items which the utility furnishes, owns, and maintains on the customer’s premises, such as service pipe, meters, regulators, vents and shut-off valves.

(3) General statement indicating the extent to which the utility will provide service in the adjustment of customer appliances at no additional customer charge.

(4) General statement of the utility's policy in making adjustments for wastage of gas when such wastage occurs without the knowledge of the customer.

(5) A statement indicating the minimum number of days allowed for payment after the due date of the customer's bill before service will be discontinued for nonpayment.

(6) A statement indicating the volumetric measurement base to which all sales of gas at other than standard delivery pressure are corrected.

(7) Forms of standard contracts required of customers for the various types of service available.

(8) All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.

(9) A copy of each type of customer bill.

(10) Definitions of classes of customer.

(11) Rules for extending service in accordance with 19.3(10).

(12) Rules with which prospective customers must comply as a condition of receiving service, and the terms of contracts required.

(13) Rules governing the establishment and maintenance of credit by customers for payment of service bills.

(14) Rules governing disconnecting and reconnecting service.

(15) Notice required from customer for having service discontinued.

(16) Rules covering temporary, emergency, auxiliary, and stand-by service.

(17) Rules shall show any limitations on loads and cover the type of equipment which may or may not be connected.

(18) Rate-regulated utilities shall include a list of service areas and the applicable rates in such form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as have service.

(19) Rules on meter reading, billing periods, bill issuance, timely customer payment, notice of delinquency and service disconnection for nonpayment of bill.

(20) Rules on how a customer or prospective customer should file a complaint with the utility, and how the complaint will be processed.

(21) Rules on how a customer, disconnected customer or potential customer for residential service may negotiate for a payment agreement on amount due, determination of even payment amounts, and time allowed for payments.

(22) If a sliding scale or automatic adjustment is applicable to regulated rates or charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.

19.2(5) *Annual, periodic and other reports to be filed with the board.*

a. System map verification. A utility shall file annually with the board a verification that it has a correct set of utility system maps for each operating or distribution area. The maps shall show:

(1) Peak shaving facilities location.

(2) Feeder and distribution mains indicating size and pressure.

(3) System metering (town border stations and other supply points).

(4) Regulator stations in system indicating inlet and outlet pressures.

(5) Calorimeter location.

(6) State boundary crossing.

(7) Franchise area.

(8) Names of all communities (post offices) served.

b. Incident reports. Rescinded IAB 1/30/08, effective 3/5/08.

c. Construction programs. Rescinded IAB 11/19/97, effective 12/24/97.

d. Reports of gas service. Each utility shall compile a monthly record of gas service. The record shall be completed within 30 days after the end of the month covered. The compilation is to be kept

available, for inspection by the board or its staff, at the utility's principal office within the state of Iowa. Such record shall contain:

- (1) The daily and monthly average of total heating values of gas in accordance with 19.7(6).
- (2) The monthly acquisition and disposition of gas.
- (3) Interruptions of service occurring during the month in accordance with 19.7(7). If there were no interruptions, then it should be so stated.
- (4) The number of customer pressure investigations made and the results.
- (5) The number of customer meters tested and test results tabulated as follows: The number that falls into limits 0 to + 2%, + 2 to + 4%, 0 to - 2%, - 2 to - 4%, over + 4%, under - 4%, and "Does Not Register" in accuracy.
- (6) Progress on leak survey programs including the number of leaks found classified as to hazard and nature, and if known, the cause and type of pipe involved.
- (7) Number of district regulators checked and nature of repairs required.
- (8) Number of house regulators checked and nature of repairs required.
- (9) Description of any unusual operating difficulties.
- (10) Type of odorant and monthly average pounds per million cubic feet used in each individual distribution system.

A summary of the 12 monthly gas service records for each calendar year shall be attached to and submitted with the utility's annual fiscal plant and statistical report to the board.

e. Filing published meter and service installation rules. A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the board.

f. Filing customer bill forms. A copy of each type of customer bill form in current use shall be filed with the board.

g. Reports to federal agencies. Copies of reports submitted to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, as amended through May 1, 2019, shall be filed with the board. Utilities operating in other states shall provide to the board data for Iowa only.

h. Change in rate. A notification to the board shall be made of any planned change in rate of service by a utility even though the change in rate of service is provided for in its tariff filing with the board. This information shall reflect the amount of increase or decrease and the effective date of application. An up-to-date tariff sheet shall be supplied to the Iowa utilities board for its copy of the tariff showing the current rates.

i. List of persons authorized to receive board inquiries. Each utility shall file with the board in the annual report required by 199—subrule 23.1(2) a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) pipeline permits (gas). Each utility shall file with the board a telephone contact number or numbers where the board can obtain current information 24 hours a day about incidents and interruptions of service from a knowledgeable person. The contact information required by this paragraph shall be kept current as changes or corrections are made.

j. Residential customer statistics. Each rate-regulated gas utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

- (1) Number of accounts;
- (2) Number of accounts certified as eligible for energy assistance since the preceding October 1;
- (3) Number of accounts past due;
- (4) Number of accounts eligible for energy assistance and past due;
- (5) Total revenue owed on accounts past due;
- (6) Total revenue owed on accounts eligible for energy assistance and past due;
- (7) Number of disconnection notices issued;
- (8) Number of disconnection notices issued on accounts eligible for energy assistance;

- (9) Number of disconnections for nonpayment;
- (10) Number of reconnections;
- (11) Number of accounts determined uncollectible; and
- (12) Number of accounts eligible for energy assistance and determined uncollectible.

k. Monthly, periodic and annual reports. Each utility shall file such other monthly, periodic and annual reports as are requested by the board. Monthly and periodic reports shall be due in the board's office within 30 days after the end of the reporting period. All annual reports shall be filed with this board by April 1 of each year for the preceding calendar year.

This rule is intended to implement Iowa Code section 476.2.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 2711C, IAB 9/14/16, effective 10/19/16; ARC 3453C, IAB 11/8/17, effective 12/13/17; ARC 4380C, IAB 3/27/19, effective 5/1/19]

199—19.3(476) General service requirements.

19.3(1) *Disposition of gas.* The meter and any service line pressure regulator shall be owned by the utility. The utility shall place a visible seal on all meters and service line regulators in customer use, such that the seal must be broken to gain entry.

a. All gas sold by a utility shall be on the basis of meter measurement except:

- (1) Where the consumption of gas may be readily computed without metering; or
- (2) For temporary service installations.

b. The amount of all gas delivered to multioccupancy premises within a single building, where units are separately rented or owned, shall be measured on the basis of individual meter measurement for each unit, except in the following instances:

- (1) Where gas is used in centralized heating, cooling or water-heating systems;
- (2) Where a facility is designated for elderly or handicapped persons;
- (3) Where submetering or resale of service was permitted prior to 1966; or
- (4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multioccupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

If a multioccupancy building is master-metered, the end user occupants may be charged for natural gas as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of the gas service is used, the total charge for gas service shall not exceed the total gas bill charged by the utility for the same period.

c. Master metering to multiple buildings is prohibited, except for multiple buildings owned by the same person or entity. Multioccupancy premises within a multiple building complex may be master-metered pursuant to this paragraph only if the requirements of paragraph 19.3(1) "b" have been met.

d. For purposes of this subrule, a "master meter" means a single meter used in determining the amount of natural gas provided to a multioccupancy building or multiple buildings.

e. This rule shall not be construed to prohibit any utility from requiring more extensive individual metering than otherwise required by this rule if required pursuant to tariffs approved by the board.

f. All gas consumed by the utility shall be on the basis of meter measurement except where consumption may be readily computed without metering or where metering is impractical.

19.3(2) *Condition of meter.* Rescinded IAB 11/12/03, effective 12/17/03. See 199 IAC 19.6(7).

19.3(3) *Meter reading records.* The meter reading records shall show:

- a.* Customer's name, address, rate schedule, or identification of rate schedule.
- b.* Identifying number or description of the meter(s).
- c.* Meter readings.
- d.* If the reading has been estimated.
- e.* Any applicable multiplier or constant, or reference thereto.

19.3(4) *Meter charts.* Rescinded IAB 11/8/17, effective 12/13/17.

19.3(5) *Meter register.* If it is necessary to apply a multiplier to the meter readings, the multiplier must be marked on the face of the meter register or stenciled in weather-resistant paint upon the front cover of the meter. Customers shall have continuous visual access to meter registers as a means of verifying the accuracy of bills presented to them and for implementing such energy conservation initiatives as they desire, except in the individual locations where the utility has experienced vandalism to windows in the protective enclosures. Where remote meter reading is used, whether outdoor on premises or off-premises-automated, the customers shall have a readable meter register at the meter as a means of verifying the accuracy of bills presented to them. A utility may comply with the requirements of this subrule by making the required information available via the Internet or other equivalent means.

In instances when a building owner has determined that unrestricted access to tenant metering installation would create a vandalism or safety hazard, the utility is exempted from the access provision above.

Continuing efforts should be made to eliminate or minimize the number of restricted locations. The utility should assist affected customers in obtaining meter register information.

19.3(6) *Prepayment meters.* Prepayment meters shall not be geared or set so as to result in the charge of a rate or amount higher than would be paid if a standard type meter were used, except under tariffs approved by the board.

19.3(7) *Meter reading and billing interval.* Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be provided weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without a waiver from the board. A waiver request must include the information required by 199—1.3(17A,474,476). If the board denies a waiver, or if a waiver is not sought with respect to a large volume customer after the initial month, that customer's bill shall be provided monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter reading period. The utility rules may permit the customer to supply the meter readings by telephone, by electronic means, or on a form supplied by the utility. The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery. The utility may arrange for the meter to be read by electronic means. Unless the utility has a plan to test check meter readings, a utility representative shall physically read the meter at least once each 12 months and when the utility is notified there is a change of customer.

19.3(8) *Readings and estimates.* When a customer is connected or disconnected or the meter reading date causes a given billing period to deviate by more than 10 percent (counting only business days) from the normal meter reading period, such bill shall be prorated on a daily basis.

When access to meters cannot be gained, the utility may leave with the customer a meter reading form. The customer may provide the meter reading by telephone, electronic mail (if it is allowed by the utility), or by mail. If the meter reading information is not returned in time for the billing operation, an estimated bill may be provided. If an actual meter reading cannot be obtained, the utility may provide an estimated bill without reading the meter or supplying a meter reading form to the customer. Only in unusual cases or when approval is obtained from the customer shall more than three consecutive estimated bills be provided.

The utility shall incorporate normalized weather data in its calculation of an estimated bill.

Utilities shall file with the board their procedures for calculating estimated bills, including their procedures for determining the reasonable degree-day data to use in the calculations. Utilities shall inform the board when changes are made to the procedures for calculating estimated bills.

19.3(9) *Temporary service.* Rescinded IAB 11/8/17, effective 12/13/17.

19.3(10) *Plant additions, distribution main extensions, and service lines.*

a. Definitions. The following definitions shall apply to the terms as used in this subrule.

“Advance for construction,” as used in this subrule, means cash payments or equivalent surety made to the utility by an applicant for an extensive plant addition or a distribution main extension, portions of which may be refunded depending on any subsequent service line attached to the extensive plant addition or distribution main extension. Cash payments or equivalent surety shall include a grossed-up amount for the income tax effect of such revenue. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

“Agreed-upon attachment period,” as used in this subrule, means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period shall be deemed to be 30 days.

“Contribution in aid of construction,” as used in this subrule, means a nonrefundable cash payment grossed-up for the income tax effect of such revenue covering the costs of a service line that are in excess of costs paid by the utility. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

“Distribution main extension,” as used in this subrule, means a segment of pipeline installed to convey gas to individual service lines or other distribution mains.

“Estimated annual revenues,” as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

“Estimated base revenues,” as used in this subrule, shall be calculated by subtracting the cost of purchased gas and energy efficiency charges from estimated annual revenues.

“Estimated construction costs,” as used in this subrule, shall be calculated using average current costs in accordance with good engineering practices and upon the following factors: amount of service required or desired by the customer requesting the distribution main extension or service line; size, location, and characteristics of the distribution main extension or service line, including appurtenances; and whether the ground is frozen or whether other adverse conditions exist. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility. The customer shall be charged actual permit fees in addition to estimated construction costs. Permit fees are to be paid regardless of whether the customer is required to pay an advance for construction or a nonrefundable contribution in aid of construction, and the cost of any permit fee is not refundable.

“Plant addition,” as used in this subrule, means any additional plant, other than a distribution main or service line, required to be constructed to provide service to a customer.

“Service line,” as used in this subrule, means the piping that extends from the distribution main to the meter set riser.

“Similarly situated customer,” as used in this subrule, means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

“Utility,” as used in this subrule, means a rate-regulated utility.

b. *Plant additions.* The utility shall provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. A written contract between the utility and the customer which requires an advance for construction by the customer to make plant additions shall be available for board inspection.

c. *Distribution main extensions.* Where the customer will attach to the distribution main extension within the agreed-upon attachment period after completion of the distribution main extension, the following shall apply:

(1) The utility shall finance and make the distribution main extension for a customer without requiring an advance for construction if the estimated construction costs to provide a distribution main extension are less than or equal to three times estimated base revenue calculated on the basis of similarly situated customers. The utility may use a feasibility model, rather than three times estimated base revenue, to determine what, if any, advance for construction is required of the customer. The utility

shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. Whether or not the construction of the distribution main extension would otherwise require a payment from a customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(2) If the estimated construction cost to provide a distribution main extension is greater than three times estimated base revenue calculated on the basis of similarly situated customers, the applicant for a distribution main extension shall contract with the utility and make, no more than 30 days prior to commencement of construction, an advance for construction equal to the estimated construction cost less three times estimated base revenue to be produced by the customer. The utility may use a feasibility model to determine whether an advance for construction is required. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the distribution main extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the distribution main extension shall contract with the utility and make, no more than 30 days prior to the commencement of construction, an advance for construction equal to the estimated construction cost. The utility may use a feasibility model to determine the amount of the advance for construction. The utility shall file a summary explaining the inputs into the feasibility model and a description of the model as part of the utility's tariff. A written contract between the utility and the customer shall be available for board inspection upon request. Whether or not the construction of the distribution main extension would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees, and the permit fees are not refundable.

(4) Advances for construction may be paid by cash or equivalent surety and shall be refundable for ten years. The customer has the option of providing an advance for construction by cash or equivalent surety unless the utility determines that the customer has failed to comply with the conditions of a surety in the past.

(5) Refunds. When the customer is required to make an advance for construction, the utility shall refund to the depositor for a period of ten years from the date of the original advance a pro-rata share for each service line attached to the distribution main extension. The pro-rata refund shall be computed in the following manner:

1. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the distribution main extension and each service line attached to the distribution main extension exceeds the total estimated construction cost to provide the distribution main extension, the entire amount of the advance for construction shall be refunded.

2. If the combined total of three times estimated base revenue, or the amount allowed by the feasibility model, for the distribution main extension and each service line attached to the distribution main extension is less than the total estimated construction cost to provide the distribution main extension, the amount to be refunded shall equal three times estimated base revenue, or the amount allowed by the feasibility model, when a service line is attached to the distribution main extension.

3. In no event shall the total amount to be refunded exceed the amount of the advance for construction. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

(6) The utility shall keep a record of each work order under which the distribution main extension was installed, to include the estimated revenues, the estimated construction costs, the amount of any payment received, and any refunds paid.

d. Service lines.

- (1) The utility shall finance and construct a service line without requiring a nonrefundable contribution in aid of construction or any payment by the applicant where the length of the service line

to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.

(2) Where the length of the service line exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a nonrefundable contribution in aid of construction, within 30 days after completion, for that portion of the service line on private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet if polyethylene plastic pipe is used. The nonrefundable contribution in aid of construction for that portion of the service line shall be computed as follows:

(Estimated Construction Costs) ×

(Total Length in Excess of 50 Feet) or (Total Length in Excess of 100 Feet)

(Total Length of Service Line)

(3) A utility may adopt a tariff or rule that allows the utility to finance and construct a service line of more than 50 feet, or 100 feet if polyethylene plastic pipe is used, without requiring a nonrefundable contribution in aid of construction from the customer if the tariff or rule applies equally to all customers.

(4) Whether or not the construction of the service line would otherwise require a payment from the customer, the utility shall charge the customer for actual permit fees.

e. Extensions not required. Utilities shall not be required to make distribution main extensions or attach service lines as described in this subrule, unless the distribution main extension or service line shall be of a permanent nature. When the utility provides a temporary service to a customer, the utility may require that the customer bear all of the cost of installing and removing the service in excess of any salvage realized.

f. Different payment arrangement. This subrule shall not be construed as prohibiting any utility from making a contract with a customer using a different payment arrangement, if the contract provides a more favorable payment arrangement to the customer, so long as no discrimination is practiced among similarly situated customers.

g. Areas without service or with constrained service.

(1) A utility may finance and expand natural gas service into an area of the state with no natural gas service or where capacity constraints limit the expansion of service. A utility expanding service under this paragraph may do so without requiring an advance for construction from a customer or group of customers if a standard feasibility model approved by the board shows the expansion is economically justified over a period not to exceed 20 years. The approved model will be adopted following a board proceeding in which interested parties will have the opportunity to review and comment on a model jointly proposed by the regulated gas utilities. The approved model will be made available on the board's website. The utility shall charge the customer or customers for actual permit fees, and the permit fees are not refundable.

(2) If the feasibility model does not show the expansion is economically justified without an advance for construction, a customer or group of customers may contract with the utility and make, no more than 30 days prior to commencement of construction, an advance for construction in an amount that would make the expansion economically justified.

(3) Upon making a determination that it intends to move forward with an expansion pursuant to this paragraph, the utility shall notify the board by filing the inputs and results of the feasibility model and any associated contract or contracts with the board. The utility shall maintain separate books and records for any expansion made pursuant to this paragraph until the utility's next general rate case proceeding.

19.3(11) Cooperation and advance notice. In order that full benefit may be derived from this chapter and in order to facilitate its proper application, all utilities shall observe the following cooperative practices:

a. Every utility shall give to other public utilities in the same general territory advance notice of any construction or change in construction or in operating conditions of its facilities concerned or likely to be concerned in situations of proximity, provided, however, that the requirements of this chapter shall not apply to routine extensions or minor changes in the local underground distribution facilities.

b. Every utility shall assist in promoting conformity with this chapter. An arrangement should be set up among all utilities whose facilities may occupy the same general territory, providing for the interchange of pertinent data and information including that relative to proposed and existing construction and changes in operating conditions concerned or likely to be concerned in situations of proximity.

This rule is intended to implement Iowa Code section 476.8.

[ARC 7584B, IAB 2/25/09, effective 4/1/09; ARC 2711C, IAB 9/14/16, effective 10/19/16; ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.4(476) Customer relations.

19.4(1) *Customer information.* Each utility shall:

- a. Maintain up-to-date maps, plans or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving customers in its service area.
- b. Assist the customer or prospective customer in selecting the most economical rate schedule available for the proposed type of service.
- c. Notify customers affected by a change in rates or schedule classification in the manner provided in the rules of practice and procedure before the board. (199—26.5(476))
- d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection. If the utility provides access to its rate schedules and rules for service on its website, the notice shall include the website address.
- e. Upon request, inform its customers as to the method of reading meters.
- f. State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office. If the utility provides access to its tariff and rate schedules on its website, the statement shall include the website address.
- g. Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of natural gas for each billing period during the prior 12 months.
- h. Furnish such additional information as the customer may reasonably request.

19.4(2) *Customer contact employee qualifications.* Each utility shall promptly and courteously resolve inquiries for information or complaints. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer that will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321 or toll-free 1-877-565-4450, or by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by e-mail to customer@iub.iowa.gov."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling (515)725-7321, or toll-free 1-877-565-4450, by writing to 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by e-mail to customer@iub.iowa.gov."

The bill insert or notice on the bill form shall be provided monthly by utilities serving more than 50,000 Iowa retail customers and no less than annually by all other natural gas utilities. Any utility which does not use the standard statement described in this subrule shall file its proposed statement in its tariff for approval. A utility that bills by postcard may place an advertisement in a local newspaper of

general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

19.4(3) *Customer deposits.*

a. Each utility may require from any customer or prospective customer a deposit intended to guarantee partial payment of bills for service. Each utility shall allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract, or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice.

b. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

c. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff.

d. The total deposit for any residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous 12-month period. The deposit for any residential or commercial customer for a place which has not previously received service or for an industrial customer, shall be the customer's projected one-month usage for the place to be served as determined by the utility, or as may be reasonably required by the utility in cases involving service for short periods or special occasions.

19.4(4) *Interest on customer deposits.* Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

19.4(5) *Customer deposit records.* Each utility shall keep records to show:

- a. The name and address of each depositor.
- b. The amount and date of the deposit.
- c. Each transaction concerning the deposit.

19.4(6) *Customer's receipt for a deposit.* Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish claim if the receipt is lost.

19.4(7) *Deposit refund.* A deposit shall be refunded after 12 consecutive months of prompt payment (which may be 11 timely payments and one automatic forgiveness of late payment), unless the utility is entitled to require a new or additional deposit. For refund purposes, the account shall be reviewed after 12 months of service following the making of the deposit and for each 12-month interval terminating on the anniversary of the deposit. However, deposits received from customers subject to the waiver provided by subrule 19.3(7), including surety deposits, may be retained by the utility until final billing. Upon termination of service, the deposit plus accumulated interest, less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

19.4(8) *Unclaimed deposits.* The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at

which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

19.4(9) Customer bill forms. Each customer shall be informed as promptly as possible following the reading of the customer's meter, on bill form or otherwise, of the following:

- a. The reading of the meter at the beginning and at the end of the period for which the bill is provided.
- b. The dates on which the meter was read at the beginning and end of the billing period.
- c. The number and kind of units metered.
- d. The applicable rate schedule with the identification of the applicable rate classification.
- e. The account balance brought forward and the amount of each net charge for rate-schedule-priced utility service, sales tax, other taxes, late payment charge, and total amount currently due. In the case of prepayment meters, the amount of money collected shall be shown.
- f. The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is provided.
- g. A distinct marking to identify an estimated bill.
- h. A distinct marking to identify a minimum bill.
- i. Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as sliding scale or automatic adjustment and amount of sales tax adjustments used in determining the bill.

19.4(10) Customer billing information alternate. A utility serving fewer than 5000 gas customers may provide the information in 19.4(9) on bill form or otherwise. If the utility elects not to provide the information of 19.4(9) on the bill form, it shall advise the customer, on the bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

19.4(11) Payment agreements.

a. *Availability of a first payment agreement.* When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential utility service and is not in default of a payment agreement with the utility, a utility shall offer the customer an opportunity to enter into a reasonable payment agreement.

b. *Reasonableness.* Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

c. *Terms of payment agreements.*

(1) First payment agreement. The utility shall offer the following conditions to customers who have received a disconnection notice or who have been previously disconnected and are not in default of a payment agreement:

1. For customers who received a disconnection notice or who have been disconnected less than 120 days and are not in default of a payment agreement, the utility shall offer an agreement with at least 12 even monthly payments. For customers who have been disconnected more than 120 days and are not in default of a payment agreement, the utility shall offer an agreement with at least 6 even monthly payments. The utility shall inform customers they may pay off the delinquency early without incurring any prepayment penalties.

2. The agreement shall also include provision for payment of the current account.

3. The utility may also require the customer to enter into a budget billing plan to pay the current bill.

4. When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer.

5. The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission.

6. When the customer makes the agreement over the telephone or through electronic transmission, the utility shall provide to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement or electronic agreement.

7. The document will be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage paid. If delivery is by other than U.S. mail, the document shall be considered provided to the customer when delivered to the last-known address of the person responsible for payment for the service.

8. The document shall state that unless the customer notifies the utility otherwise within ten days from the date the document is provided, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free or collect telephone number where a qualified representative can be reached.

9. Once the first payment required by the agreement is made by the customer or on behalf of the customer, the oral or electronic agreement is deemed accepted by the customer.

10. Each customer entering into a first payment agreement shall be granted at least one late payment that is four days or less beyond the due date for payment, and the first payment agreement shall remain in effect.

11. The initial payment is due on the due date for the next regular bill.

(2) Second payment agreement. The utility shall offer a second payment agreement to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments under the first payment agreement.

1. The second payment agreement shall be for a term at least as long as the term of the first payment agreement.

2. The customer shall be required to pay for current service in addition to the monthly payments under the second payment agreement and may be required to make the first payment up-front as a condition of entering into the second payment agreement.

3. The utility may also require the customer to enter into a budget billing plan to pay the current bill.

(3) Additional payment agreements. The utility may offer additional payment agreements to the customer.

d. Refusal by utility. A customer may offer the utility a proposed payment agreement. If the utility and the customer do not reach an agreement, the utility may refuse the offer orally, but the utility must provide a written refusal of the customer's final offer, stating the reason for the refusal, within three days of the oral notification. The written refusal shall be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal shall be considered provided to the customer when handed to the customer or when delivered to the last-known address of the person responsible for the payment for the service.

A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance must be made to the board within ten days after the written refusal is provided. During the review of this request, the utility shall not disconnect the service.

19.4(12) Bill payment terms. The bill shall be considered provided to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered provided when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the providing of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 19.3(7) may not be considered delinquent less than 5 days from the date the bill is provided. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is provided.

a. The date of delinquency for all residential customers or other customers whose consumption is less than 250 ccf per month shall be changeable for cause, such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. In

no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.

b. In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

c. If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

d. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

e. Budget billing plan. Utilities shall offer a budget billing plan to all residential customers or other customers whose consumption is less than 250 ccf per month. A budget billing plan should be designed to limit the volatility of a customer's bill and maintain reasonable account balances. The budget billing plan shall include at least the following:

(1) Be offered to each eligible customer when the customer initially requests service. The plan may be estimated if there is insufficient usage history to create a budget billing plan based on actual use.

(2) Allow for entry into the budget billing plan anytime during the calendar year.

(3) Provide that a customer may request termination of the plan at any time. If the customer's account is in arrears at the time of termination, the balance shall be due and payable at the time of termination. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to future charges. A utility is not required to offer a new budget billing plan to a customer for six months after the customer has terminated from a budget billing plan.

(4) Use a computation method that produces a reasonable monthly budget billing amount, which may take into account forward-looking factors such as fuel price and weather forecasts, and that complies with requirements in this subrule. The computation method used by the utility shall be described in the utility's tariff and shall be subject to board approval. The utility shall give notice to customers when it changes the type of computation method in the budget billing plan.

The amount to be paid at each billing interval by a customer on a budget billing plan shall be computed at the time of entry into the plan and shall be recomputed at least annually. The budget billing amount may be recomputed monthly, quarterly, when requested by the customer, or whenever price, consumption, or a combination of factors results in a new estimate differing by 10 percent or more from that in use.

When the budget billing amount is recomputed, the budget billing plan account balance shall be divided by 12, and the resulting amount shall be added to the estimated monthly budget billing amount. Except when a utility has a budget billing plan that recomputes the budget billing amount monthly, the customer shall be given the option of applying any credit to payments of subsequent months' budget billing amounts due or of obtaining a refund of any credit in excess of \$25.

Except when a utility has a budget billing plan that recomputes the budget billing amount monthly, the customer shall be notified of the recomputed payment amount not less than one full billing cycle prior to the date of delinquency for the recomputed payment. The notice may accompany the bill prior to the bill that is affected by the recomputed payment amount.

(5) Irrespective of the account balance, a delinquency in payment shall be subject to the same collection and disconnection procedures as other accounts, with the late payment charge applied to the budget billing amount. If the account balance is a credit, the budget billing plan may be terminated by the utility after 30 days of delinquency.

19.4(13) *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 19.4(14) but not less than five years. Customer billing records shall show, where applicable:

- a. Therm consumption.
- b. Meter reading.
- c. Total amount of bill.

19.4(14) *Adjustment of bills.* Bills which are incorrect due to billing errors or faulty metering installation are to be adjusted as follows:

a. Fast metering. Whenever a metering installation is tested and found to have overregistered more than 2 percent, the utility shall recalculate the bills for service.

(1) The bills for service shall be recalculated from the time at which the error first developed or occurred if that time can be definitely determined.

(2) If the time at which the error first developed or occurred cannot be definitely determined, it shall be assumed that the overregistration has existed for the shortest time period calculated as one-half the time since the meter was installed or one-half the time elapsed since the last meter test unless otherwise ordered by the board.

(3) If the recalculated bills indicate that \$5 or more is due an existing customer or \$10 or more is due a person no longer a customer of the utility, the tariff shall provide for refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation during the time the error existed. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last-known address, and the utility shall, upon demand made within three months thereafter, refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

b. Slow metering. Whenever a meter is found to be more than 2 percent slow, the tariff may provide for back billing the customer for the amount the test indicates has been undercharged for the period of inaccuracy.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, the tariff may provide for use of the registration of check metering installation, if any, or for estimating the quantity consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed.

(1) The utility may not back bill due to underregistration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than, but may be greater than, \$5 for an existing customer or \$10 for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

(2) The period for back billing shall not exceed the last six months the meter was in service unless otherwise ordered by the board.

(3) Back billings shall be provided no later than six months following the date of the metering installation test.

c. Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be 100 percent accurate. For the purpose of billing adjustment the meter error shall be one-half of the algebraic sum of the error at full-rated flow plus the error at check flow.

d. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

e. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the undercharge may be billed to the customer. The period for which the utility may adjust for the undercharge shall not exceed five years unless otherwise ordered by the board. The maximum back bill shall not exceed the dollar amount equivalent to the tariffed rate for like charges

(e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

f. Credits and explanations. Credits due a customer because of meter inaccuracies, errors in billing, or misapplication of rates shall be separately identified.

19.4(15) Refusal or disconnection of service. A utility shall refuse service or disconnect service to a customer, as defined in subrule 19.1(3), in accordance with tariffs that are consistent with these rules.

a. The utility shall give written notice of pending disconnection except as specified in paragraph 19.4(15) "*b.*" The notice shall set forth the reason for the notice and final date by which the account is to be settled or specific action taken. The notice shall be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered provided when delivered to the last-known address of the person responsible for payment for the service. The date for disconnection of service shall be not less than 12 days after the notice is provided. The date for disconnection of service for customers on shorter billing intervals under subrule 19.3(7) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for disconnection of service. In determining the final date by which the account is to be settled or other specific action taken, the days of notice for the causes shall be concurrent.

b. Service may be disconnected without notice:

- (1) In the event of a condition determined by the utility to be hazardous.
- (2) In the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.
- (3) In the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.
- (4) In the event of unauthorized use.

c. Service may be disconnected or refused after proper notice:

- (1) For violation of or noncompliance with the utility's rules on file with the board.
- (2) For failure of the customer to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the board, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the board.
- (3) For failure of the customer to permit the utility reasonable access to the utility's equipment.

d. Service may be refused or disconnected after proper notice for nonpayment of a bill or deposit, except as restricted by subrules 19.4(16) and 19.4(17), provided that the utility has complied with the following provisions when applicable:

(1) Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal;

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities available. Customers billed more frequently than monthly pursuant to subrule 19.3(7) shall be given posted written notice that they have 24 hours to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities. All written notices shall include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide the representative's name and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) The summary of the rights and responsibilities must be approved by the board. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board electronically its proposed form for approval. A utility billing a combination customer for both gas and electric service

may modify the standard form to replace each use of the word “gas” with the words “gas and electric” in all instances.

**CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF
OF GAS SERVICE FOR NONPAYMENT**

1. What can I do if I receive a notice from the utility that says my gas service will be shut off because I have a past due bill?

- a. Pay the bill in full; or
- b. Enter into a reasonable payment plan with the utility (see #2 below); or
- c. Apply for and become eligible for low-income energy assistance (see #3 below); or
- d. Give the utility a written statement from a doctor or public health official stating that shutting off your gas service would pose an especial health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

2. How do I go about making a reasonable payment plan? (Residential customers only)

- a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, you may qualify for a second payment agreement under certain conditions.
- c. If you do not make the payments you promise, the utility may shut off your utility service on one day's notice unless all the money you owe the utility is paid or you enter into another payment agreement.

3. How do I apply for low-income energy assistance? (Residential customers only)

- a. Contact the local community action agency in your area (see attached list) or visit humanrights.iowa.gov/dcaa/where-apply.
- b. To avoid disconnection, you must apply for energy assistance or weatherization before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance.
- c. Being certified eligible for energy assistance will prevent your service from being disconnected from November 1 through April 1.
- d. If you have additional questions, contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-3861.

4. What if someone living at the residence has a serious health condition? (Residential customers only)

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notifies the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

5. What should I do if I believe my bill is not correct?

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute. (See #9 below.)

6. When can the utility shut off my utility service because I have not paid my bill?

- a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.

b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.

c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2 above).

d. The utility will not shut off your service if the temperature is forecasted to be 20 degrees Fahrenheit or colder during the following 24-hour period, including the day your service is scheduled to be shut off.

e. If you have qualified for low-income energy assistance, the utility cannot shut off your service from November 1 through April 1. However, you will still owe the utility for the service used during this time.

f. The utility will not shut off your service if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

g. If one of the heads of household is a service member deployed for military service, utility service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the utility must be informed of the deployment prior to disconnection. However, you will still owe the utility for service used during this time.

7. How will I be told the utility is going to shut off my gas service?

a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.

b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.

c. The utility must also try to reach you by telephone or in person before it shuts off your service. From November 1 through April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door or another conspicuous place of your residence to tell you that your utility service will be shut off.

8. If service is shut off, when will it be turned back on?

a. The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2 above).

b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.

c. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

9. Is there any other help available besides my utility?

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 1-877-565-4450. You may also write the Iowa Utilities Board at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, or by E-mail at customer@iub.iowa.gov. Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 1-800-532-1275.

(4) When disconnecting service to a residence, made a diligent attempt to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and the customer's rights and responsibilities. During the period from November 1 through April 1, if the attempt at customer contact fails, the premises shall be posted at least one day prior to disconnection with a notice informing the customer of the pending disconnection and rights and responsibilities available to avoid disconnection.

If an attempt at personal or telephone contact of a customer occupying a rental unit has been unsuccessful, the utility shall make a diligent attempt to contact the landlord of the rental unit, if known, to determine if the customer is still in occupancy and, if so, the customer's present location. The landlord shall also be informed of the date when service may be disconnected. The utility shall make a diligent attempt to inform the landlord at least 48 hours prior to disconnection of service to a tenant.

If the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons for the disconnection.

(5) Disputed bill. If the customer has received notice of disconnection and has a dispute concerning a bill for natural gas service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid disconnection of service. A utility shall delay disconnection for nonpayment of the disputed bill for up to 45 days after the providing of the bill if the customer pays the undisputed amount. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board in compliance with 199—Chapter 6.

(6) Reconnection. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect the customer not later than 11 a.m. the next day.

(7) Severe cold weather. A disconnection may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at a residence when the actual temperature or the 24-hour forecast of the National Weather Service for the residence's area is predicted to be 20 degrees Fahrenheit or colder. If the utility has properly posted a disconnect notice but is precluded from disconnecting service because of severe cold weather, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the residence's area rises above 20 degrees Fahrenheit and is forecasted to remain above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past due amount or is otherwise entitled to postponement of disconnection.

(8) Health of a resident. Disconnection of a residential customer shall be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage the person's own resources, to carry out activities of daily living or to be protected from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation.

The utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certifying party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. If the customer does not enter into a reasonable payment agreement for the retirement of the unpaid balance of the account within the first 30 days and does not keep the current account paid during the period that the unpaid balance is to be retired, the customer is subject to disconnection pursuant to paragraph 19.4(15) "f."

(9) Winter energy assistance (November 1 through April 1). If the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date the utility is notified to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program.

A utility may develop an incentive program to delay disconnection on April 1 for customers who make payments throughout the November 1 through April 1 period. All such incentive programs shall be set forth in tariffs approved by the board.

(10) Deployment. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

e. Abnormal gas consumption. A customer who is subject to disconnection for nonpayment of bill, and who has gas consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of gas usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

f. A utility may disconnect gas service without the written 12-day notice for failure of the customer to comply with the terms of a payment agreement, except as provided in numbered paragraph 19.4(11)“c”(1)“4,” provided the utility complies with the provisions of paragraph 19.4(15)“d.”

g. The utility shall, prior to November 1, mail customers a notice describing the availability of winter energy assistance funds and the application process. The notice must be of a type size that is easily legible and conspicuous and must contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. A utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper’s guide.

19.4(16) *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a customer:

- a.* Delinquency in payment for service by a previous occupant of the premises to be served.
- b.* Failure to pay for merchandise purchased from the utility.
- c.* Failure to pay for a different type or class of public utility service.
- d.* Failure to pay the bill of another customer as guarantor thereof.
- e.* Failure to pay the back bill provided in accordance with paragraph 19.4(14)“b” (slow meters).
- f.* Failure to pay adjusted bills based on the undercharges set forth in paragraph 19.4(14)“e.”
- g.* Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which the customer has been receiving service in the customer’s name.
- h.* Delinquency in payment for service by an occupant, if the customer applying for service is creditworthy and able to satisfy any deposit requirements.
- i.* Delinquency in payment for service arising more than ten years prior, as measured from the most recent of:
 - (1) The last date of service for the account giving rise to the delinquency,
 - (2) Physical disconnection of service for the account giving rise to the delinquency, or
 - (3) The last voluntary payment or voluntary written promise of payment made by the customer, if made before the ten-year period described in this paragraph has otherwise lapsed.
- j.* Delinquency in payment for service that arose on or before September 4, 2010, pursuant to an oral contract, except in cases of fraud or deception that prevented the utility from timely addressing such delinquencies with the customer.

19.4(17) *When disconnection prohibited.*

a. No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

b. If the utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90,

disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

19.4(18) *Change in character of service.* The following shall apply to a material change in the character of gas service:

a. Changes under the control of the utility. The utility shall make such changes only with the approval of the board, and after adequate notice to the customers (see 19.7(6) “a”).

b. Changes not under control of the utility or customer. The utility shall adjust appliances to attain the proper combustion of the gas supplied. Due consideration shall be given to the gas heating value and specific gravity (see 19.7(6) “b”).

c. Appliance adjustment charge. The utility shall make any necessary adjustments to the customer’s appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

19.4(19) *Customer complaints.* Each utility shall investigate promptly and thoroughly and keep a record of written complaints and all other reasonable complaints received by it from its customers in regard to safety, service, or rates, and the operation of its system as will enable it to review and analyze its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. All complaints caused by a major outage or interruption shall be summarized in a single report.

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of customer complaints.

b. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

c. The final step in a complaint hearing and review procedure shall be a filing for board resolution of the issues.

This rule is intended to implement Iowa Code sections 476.2, 476.6, 476.8, 476.20 and 476.54.

[ARC 9101B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 12/29/10; ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.5(476) Engineering practice.

19.5(1) *Requirement for good engineering practice.* The gas plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

19.5(2) *Standards incorporated by reference.*

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” as amended through May 1, 2019.

(2) 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” as amended through May 1, 2019.

(3) 49 CFR Part 193, “Liquefied Natural Gas Facilities: Federal Safety Standards,” as amended through May 1, 2019.

(4) 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through May 1, 2019.

(5) ASME B31.8 - 2016, “Gas Transmission and Distribution Piping Systems.”

(6) NFPA 59-2018, “Utility LP-Gas Plant Code.”

(7) At railroad crossings, 199—42.7(476), “Engineering standards for pipelines.”

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-2018, “National Fuel Gas Code.”

(2) NFPA 501A-2017, “Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.”

19.5(3) Adequacy of gas supply. The natural gas regularly available from supply sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.

19.5(4) Gas transmission and distribution facilities. The utility’s gas transmission and distribution facilities shall be designed, constructed and maintained as required to reliably perform the gas delivery burden placed upon them. Each utility shall be capable of emergency repair work on a scale consistent with its scope of operation and with the physical conditions of its transmission and distribution facilities.

In appraising the reliability of the utility’s transmission and distribution system, the board will consider, as principal factors, the condition of the physical property and the size, training, supervision, availability, equipment and mobility of the maintenance forces.

19.5(5) Inspection of gas plant. Each utility shall adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility’s experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 9501B, IAB 5/18/11, effective 6/22/11; ARC 1359C, IAB 3/5/14, effective 4/9/14; ARC 2711C, IAB 9/14/16, effective 10/19/16; ARC 4380C, IAB 3/27/19, effective 5/1/19]

199—19.6(476) Metering.

19.6(1) Inspection and testing program. Each utility shall adopt a written program for the inspection and testing of its meters to determine the necessity for adjustment, replacement or repair. The frequency of inspection and methods of testing shall be based on the utility’s experience, manufacturer’s recommendations, and accepted good practice. The board considers the publications listed in 19.6(3) to be representative of accepted good practice. Each utility shall maintain inspection and testing records for each meter and associated device until three years after its retirement.

19.6(2) Program content. The written program shall, at minimum, address the following subject areas:

- a. Classification of meters by capacity, type, and any other factor considered pertinent.
- b. Checking of new meters for acceptable accuracy before being placed in service.
- c. Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.
- d. Periodic calibration or testing of devices or instruments used by the utility to test meters.
- e. Leak testing of meters before return to service.
- f. The limits of meter accuracy considered acceptable by the utility.
- g. The nature of meter and meter test records maintained by the utility.

19.6(3) Accepted good practice. The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

- a. American National Standard for Gas Displacement Meters (500 Cubic Feet Per Hour Capacity and Under), ANSI B109.1-2000.
- b. American National Standard for Diaphragm Type Gas Displacement Meters (Over 500 Cubic Feet Per Hour Capacity), ANSI B109.2-2000.
- c. American National Standard for Rotary Type Gas Displacement Meters, ANSI B109.3-2000.
- d. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1986 (Reaffirmed 2008).
- e. Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, API MPMS Chapter 14.3, Parts 1-4.

19.6(4) Meter adjustment. All meters and associated metering devices shall, when tested, be adjusted as closely as practicable to the condition of zero error.

19.6(5) Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. A test need not be made more frequently than once in 18 months.

A written report of the test results shall be mailed to the customer within ten days of the completed test and a record of each test shall be kept on file at the utility's office. The utility shall give the customer or a representative of the customer the opportunity to be present while the test is conducted.

If the test finds the meter is accurate within the limits accepted by the utility in its meter inspection and testing program, the utility may charge the customer \$25 or the cost of conducting the test, whichever is less. The customer shall be advised of any potential charge before the meter is removed for testing.

19.6(6) Referee tests. Upon written request by a customer or utility, the board will conduct a referee test of a meter. A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 deposit in the form of a check or money order made payable to the utility.

Within 5 days of receipt of the written request and payment, the board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 19.4(14). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

19.6(7) Condition of meter. No meter that is known to be mechanically defective, has an incorrect correction factor, or has not been tested and adjusted, if necessary, in accordance with 19.6(2) "b," "c," and "e," shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the gas requirements of the customer.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.7(476) Standards of quality of service.

19.7(1) Purity requirements. All gas supplied to customers shall be substantially free of impurities which may cause corrosion of mains or piping or from corrosive or harmful fumes when burned in a properly designed and adjusted burner.

19.7(2) Pressure limits. The maximum allowable operating pressure for a low-pressure distribution system shall not be so high as to cause the unsafe operation of any connected and properly adjusted low-pressure gas-burning equipment.

19.7(3) Adequacy for pressure. Each utility shall have a substantially accurate knowledge of the pressures inside its piping. Periodic pressure measurements shall be taken during periods of high demand at remote locations in distribution systems to determine the adequacy of service. Records of such measurements including the date, time, and location of the measurement shall be maintained not less than two years.

19.7(4) Standards for pressure measurements.

a. Secondary standards. Each utility shall own or have access to a dead weight tester. This instrument must be maintained in an accurate condition.

b. Working standards. Each utility must have or have access to water manometers, laboratory quality indicating pressure gauges, and field-type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system. Working standards must be checked periodically by comparison with a secondary standard.

19.7(5) Handling of standards. Extreme care must be exercised in the handling of standards to ensure that their accuracy is not disturbed. Each standard shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

19.7(6) Heating value.

a. Awareness. Each utility shall have a substantially accurate knowledge of the heating value of the gas being delivered to customers at all times.

b. Natural and LP-gas. The heating value of natural gas and undiluted, commercially pure LP-gas shall be considered as being not under the control of the utility. The utility shall determine the allowable range of monthly average heating values within which its customers' appliances may be expected to

function properly without repeated readjustment of the burners. If the monthly average heating value is above or below the limits of the allowable range for three successive months, the customers' appliances must be readjusted in accordance with 19.4(18) "c."

c. Peak shaving or other mixed gas. The heating value of gas in a distribution system which includes gas from LP or LNG peak shaving facilities, or gas from a source other than a pipeline supplier, shall be considered within the control of the utility. The average daily heating value of mixed gas shall be at least 95 percent of that normally delivered by the pipeline supplier. All mixed gas shall have a specific gravity of less than 1.000, and heating value shall not be so high as to cause improper operation of properly adjusted customer equipment.

d. Heating value determination and records. Unless acceptable heating value information is available for all periods from other sources, including the pipeline supplier, the utility shall provide and maintain equipment, or shall have a method of computation, by which the heating value of the gas in a distribution system can be accurately determined. The type, accuracy, operation and location of equipment, and the accuracy of computation methods, shall be in accordance with accepted industry practices and equipment manufacturer's recommendations and shall be subject to review by the board.

19.7(7) Interruptions of service.

a. Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety. Each utility shall maintain records for not less than two years of interruptions of service as required to be reported in 19.17(1) and shall periodically review these records to determine steps to be taken to prevent recurrence.

b. Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers. Interruptions shall be preceded by adequate notice to those who will be affected.

199—19.8(476) Safety.

19.8(1) Acceptable standards. As criteria of accepted good safety practice the board will use the applicable provisions of the standard listed in 19.5(2).

19.8(2) Protective measures. Each utility shall exercise reasonable care to reduce hazards inherent in connection with utility service to which its employees, its customers, and the general public may be subjected and shall adopt and execute a safety program designed to protect the public, fitted to the size and type of its operations. The utility shall give reasonable assistance to the board in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents. Each utility shall maintain a summary of all reportable accidents arising from its operations.

19.8(3) Turning on gas. Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref: Sec. 8.2.3 and Annex D, ANSI Z223.1/NFPA 54-2018).

19.8(4) Gas leaks. A report of a gas leak shall be considered as an emergency requiring immediate attention.

19.8(5) Odorization. Any gas distributed to customers through gas mains or gas services or used for domestic purposes in compressor plants, which does not naturally possess a distinctive odor to the extent that its presence in the atmosphere is readily detectable at all gas concentrations of one-fifth of the lower explosive limit and above, shall have an odorant added to it to make it so detectable. Odorization is not necessary, however, for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent. Suitable tests must be made to determine whether the odor meets the standards of subrule 19.5(2). Prompt remedial action shall be taken if odorization levels do not meet the prescribed limits for detectability.

19.8(6) Burial near electric lines. Each pipeline shall be installed with at least 12 inches of clearance from buried electrical conductors. If this clearance cannot be maintained, protection from damage or introduction of current from an electrical fault shall be provided by other means.

[ARC 7962B, IAB 7/15/09, effective 8/19/09; ARC 2711C, IAB 9/14/16, effective 10/19/16; ARC 4380C, IAB 3/27/19, effective 5/1/19]

199—19.9(476) Energy conservation strategies. Rescinded IAB 11/12/03, effective 12/7/03.

199—19.10(476) Purchased gas adjustment (PGA).

19.10(1) *Purchased gas adjustment clause.* Pursuant to Iowa Code section 476.6(11), purchased gas adjustments shall be computed separately for each customer classification or grouping previously approved by the board. Purchased gas adjustments shall use the same unit of measure as the utility's tariffed rates. Purchased gas adjustments shall be calculated using factors filed in annual or periodic filings according to the following formula:

$$PGA = \frac{(C \times Rc) + (D \times Rd) + (Z \times Rz) + Rb + E}{S}$$

PGA is the purchased gas adjustment per unit.

S is the anticipated yearly gas commodity sales volume for each customer classification or grouping.

C is the volume of applicable commodity purchased for each customer classification or grouping required to meet sales, S, plus the expected lost and unaccounted for volumes.

Rc is the weighted average of applicable commodity prices or rates, including appropriate hedging tools costs, to be in effect September 1 corresponding to purchases C.

D is the total volume of applicable entitlement reservation purchases required to meet sales, S, for each customer classification or grouping.

Rd is the weighted average of applicable entitlement reservation charges to be in effect September 1 corresponding to purchases D.

Z is the total quantity of applicable storage service purchases required to meet sales, S, for each customer classification or grouping.

Rz is the weighted average of applicable storage service rates to be in effect September 1 corresponding to purchases Z.

Rb is the adjusted amount necessary to obtain the anticipated balance for the remaining PGA year calculated by taking the anticipated PGA balance divided by the forecasted volumes, including storage, for one or more months of the remaining PGA year.

E is the per unit overcollection or undercollection adjustment as calculated under subrule 19.10(7).

The components of the formula shall be determined as follows for each customer classification or grouping:

a. The actual sales volumes S for the prior 12-month period ending May 31, with the necessary degree-day adjustments, and further adjustments approved by the board.

Unless a utility receives prior board approval to use another methodology, a utility shall use the same weather normalization methodology used in prior approved PGA and rate case.

b. The annual expected lost and unaccounted for factors shall be calculated by determining the actual difference between sales and purchase volumes for the 12 months ending May 31 or from the current annual IG-1 filing, but in no case will this factor be less than 0.

c. The purchases C, D, and Z which will be necessary to meet requirements as determined in 19.10(1).

d. The purchased gas adjustments shall be adjusted prospectively to reflect the final decision issued by the board in a periodic review proceeding.

19.10(2) *Annual purchased gas adjustment filing.* Each rate-regulated utility shall file on or before August 1 of each year, for the board's approval, a purchased gas adjustment for the 12-month period beginning September 1 of that year.

The annual filing shall restate each factor of the formula stated in subrule 19.10(1).

The annual filing shall be based on customer classifications and groupings previously approved by the board unless new classifications or groupings are proposed.

The annual filing shall include all worksheets and detailed supporting data used to determine the purchased gas adjustment volumes and factors. The utility shall provide an explanation of the calculations of each factor. Information already on file with the board may be incorporated by reference in the filing.

19.10(3) *Periodic changes to purchased gas adjustment clause.* Periodic purchased gas adjustment filings shall be based on the purchased gas adjustment customer classifications and groupings previously approved by the board. Changes in the customer classification and grouping on file are not automatic and require prior approval by the board.

Periodic filings shall include all worksheets and detailed supporting data used to determine the amount of the adjustment.

Changes in factors S or C may not be made in periodic purchased gas filings. A change in factor D or Z may be made in periodic filings and will be deemed approved if it conforms to the annual purchased gas filing or if it conforms to the principles set out in 19.10(6).

The utility shall implement automatically all purchased gas adjustment changes which result from changes in Rc, Rd, or Rz with concurrent board notification with adequate information to calculate and support the change. The purchased gas adjustment shall be calculated separately for each customer classification or grouping.

Unless otherwise ordered by the board, a rate-regulated utility's purchased gas adjustment rate factors shall be adjusted as purchased gas costs change and shall recover from the customers only the actual costs of purchased gas and other currently incurred charges associated with the delivery, inventory, or reservation of natural gas. Such periodic changes shall become effective with usage on or after the date of change.

19.10(4) *Factor Rb.* Each utility has the option of filing an Rb calculation with its October-January PGA filings but shall file an Rb calculation with its February filing and subsequent monthly filings in the PGA year. If the anticipated PGA balance represents costs in excess of revenues, factor Rb shall be assigned a positive value; if the anticipated balance represents revenues in excess of costs, factor Rb shall be assigned a negative value.

19.10(5) *Take-or-pay adjustment.* Rescinded IAB 11/12/03, effective 12/17/03.

19.10(6) *Allocations of changes in contract pipeline transportation capacity obligations.* Any change in contractual pipeline transportation capacity obligations to transportation or storage service providers serving Iowa must be reported to the board within 30 days of receipt. The change must be applied on a pro-rata basis to all customer classifications or groupings, unless another method has been approved by the board. Where a change has been granted as a result of the utility's request based on the needs of specified customers, that change may be allocated to the specified customers. Where the board has approved anticipated sales levels for one or more customer classifications or groupings, those levels may limit the pro-rata reduction for those classifications or groupings.

19.10(7) *Reconciliation of underbillings and overbillings.* The utility shall file with the board on or before October 1 of each year a purchased gas adjustment reconciliation for the 12-month period which began on September 1 of the previous year. This reconciliation shall be the actual net invoiced costs of purchased gas and appropriate financial hedging tools costs less the actual revenue billed through its purchased gas adjustment clause net of the prior year's reconciliation dollars for each customer classification or grouping. Actual net costs for purchased gas shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

Negative differences in the reconciliation shall be considered overbilling by the utility, and positive differences shall be considered underbilling. This reconciliation shall be filed with all worksheets and detailed supporting data for each particular purchased gas adjustment clause. Penalty purchases shall only be includable where the utility clearly demonstrates a net savings.

a. The annual reconciliation filing shall include the following information concerning the hedging tools used by the utility:

(1) The volume of physical gas being hedged by the utility and the strategies used by the utility for hedging.

(2) The reason each hedging strategy was undertaken (e.g., to hedge storage gas, a floating price contract).

(3) A statement as to how each hedging strategy was consistent with the local distribution company's natural gas procurement plan.

(4) An explanation as to why the local distribution company believes each hedging strategy was in the best interest of general system customers.

(5) A detailed explanation of the instruments used to implement each hedging strategy (e.g., fixed-price purchases, future contracts, basis swaps, fixed-price swaps, call options, put options, option collars).

(6) The amount of all commissions paid and to whom those payments were made.

(7) The amount of money or other collateral held in margin accounts or provided to counterparties as credit support for hedging transactions.

(8) The amount of all other third-party administrative or contracting costs paid and to whom those costs were paid.

(9) The name of each hedging counterparty and the amount of money paid to or received from each counterparty with respect to hedging (e.g., option premiums, financial settlement of gains or losses).

(10) Detailed reports or schedules of each hedging strategy, including the following information for each hedging instrument entered into by the utility:

1. The type of hedging instrument.

2. The date on which the hedging instrument was entered into by the utility.

3. The name of the counterparty with whom the hedging instrument was entered into.

4. The notional quantity of natural gas associated with the hedging instrument.

5. The notional delivery period associated with the hedging instrument.

6. The total amount of gains or losses realized by the utility on the hedging instrument.

7. For each futures contract or fixed-price purchase or sale, the fixed price paid or received by the utility and the final settlement price for the futures contract.

8. For each swap contract, the fixed price or index price paid by the utility, the index price or fixed price received by the utility, and the final settlement price of each applicable index referenced in the swap contract.

9. For each option contract, the underlying futures contract or index price referenced in the option contract, the strike price for the option, the premium paid or received by the utility for the option, and the final settlement price for the futures contract or index price referenced in the option.

10. For any other hedging instruments, relevant economic terms, conditions, reference prices, and other factors to support calculations of gains or losses associated with such instruments.

11. For the total natural gas volumes hedged during the PGA year, the fully hedged price of gas and the price if the gas had not been hedged.

b. Any underbilling determined from the reconciliation shall be collected through ten-month adjustments to the appropriate purchased gas adjustment. The underbilling generated from each purchased gas adjustment clause shall be divided by the anticipated sales volumes for the prospective ten-month period beginning November 1 (based upon the sales determination in subrule 19.10(1)).

The quotient, determined on the same basis as the utility's tariff rates, shall be added to the purchased gas adjustment for the prospective ten-month period beginning November 1.

c. Any overbilling determined from the reconciliation shall be refunded to the customer classification or grouping from which it was generated. The overbilling shall be divided by the annual cost of purchased gas subject to recovery for the 12-month period which began the prior September 1 for each purchased gas adjustment clause and applied as follows:

(1) If the net overbilling from the purchased gas adjustment reconciliation exceeds the applicable percentage of the annual cost of purchased gas subject to recovery for a specific customer classification or grouping, the utility shall refund the overbilling by bill credit or check starting on the first day of billing in the November billing cycle of the current year. The minimum amount to be refunded by check shall be \$10. Interest shall be calculated on amounts exceeding the applicable percentage from the PGA year midpoint to the date of refunding. The interest rate shall be the dealer commercial paper rate (90-day, high-grade unsecured notes) quoted in the "Money Rates" section of the Wall Street Journal on the last working day of August of the current year.

(2) If the net overbilling from the purchased gas adjustment reconciliation does not exceed the applicable percentage of the annual cost of purchased gas subject to recovery for a specific customer

classification or grouping, the utility may refund the overbilling by bill credit or check starting on the first day of billing in the November billing cycle of the current year, or the utility may refund the overbilling through ten-month adjustments to the particular purchased gas adjustment from which they were generated. The minimum amount to be refunded by check shall be \$10. This adjustment shall be determined by dividing the overcollection by the anticipated sales volume for the prospective ten-month period beginning November 1 as determined in subrule 19.10(1) for the applicable purchased gas adjustment clause. The quotient, determined on the same basis as the utility's tariff rates, shall be a reduction to that particular purchased gas adjustment for the prospective ten-month period beginning November 1.

(3) The overbilling percentage applicable to utilities serving fewer than 10,000 customers is 5 percent. For utilities serving 10,000 or more customers, the applicable percentage is 3 percent.

d. When a customer has reduced or terminated system supply service and is receiving transportation service, any liability for overcollections and undercollections shall be determined in accordance with the utility's gas transportation tariff.

19.10(8) Refunds related to gas costs charged through the PGA. The utility shall file a refund plan with the board within 30 days of the receipt of any refund related to gas costs charged through the PGA.

a. The utility shall refund to customers by bill credit or check an amount equal to any refund, plus accrued interest, if the refund exceeds \$10 per average residential customer under the applicable customer classification or grouping. The utility may refund lesser amounts through the applicable customer classification or grouping or retain undistributed refund amounts in special refund retention accounts for each customer classification or grouping under the applicable PGA clause until such time as additional refund obligations or interest cause the average residential customer refund to exceed \$10. Any obligations remaining in the retention accounts on September 1 shall become a part of the annual PGA reconciliation.

b. The utility shall file with the refund plan the following information:

- (1) A statement of reason for the refund.
- (2) The amount of the refund with support for the amount.
- (3) The balance of the appropriate refund retention accounts.
- (4) The amount due under each customer classification or grouping.
- (5) The intended period of the refund distribution.
- (6) The estimated interest accrued for each refund through the proposed refund period, with complete interest calculations and supporting data as determined in paragraph 19.10(8)"d."
- (7) The total amount to be refunded, the amount to be refunded per customer classification or grouping, and the refund per ccf or therm.
- (8) The estimated interest accrued for each refund received and for each amount in the refund retention accounts through the date of the filing with the complete interest calculation and support as determined in paragraph 19.10(8)"d."
- (9) The total amount to be retained, the amount to be retained per customer classification or grouping, and the level per ccf or therm.
- (10) The calculations demonstrating that the retained balance is less than \$10 per average residential customer with supporting schedules for all factors used.

c. The refund to each customer shall be determined by dividing the amount in the appropriate refund retention account, including interest, by the total ccf or therm of system gas consumed by affected customers during the period for which the refundable amounts are applicable and multiplying the quotient by the ccf or therms of system supply gas actually consumed by the customer during the appropriate period. The utility may use the last available 12-month period if the use of the actual period generating the refund is impractical. The utility shall file complete support documentation for all figures used.

d. The interest rate on refunds distributed under this subrule, compounded annually, shall be the dealer commercial paper rate (90-day, high-grade unsecured notes) quoted in the "Money Rates" section of the Wall Street Journal on the day the refund obligation vests. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier or the midpoint of the first month of overcollection to the date the refund is distributed to customers.

e. The rate-regulated utility shall make a reasonable effort to forward refunds, by check, to eligible recipients who are no longer customers.

f. The minimum amount to be refunded by check shall be \$5.

This rule is intended to implement Iowa Code section 476.6(11).
[ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.11(476) Periodic review of gas procurement practices.

19.11(1) *Procurement plan.* Pursuant to Iowa Code section 476.6(11), the board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The board shall provide the utilities 90 days' notice of the requirement to file a procurement plan. In the years in which the board does not conduct a contested case proceeding, the board may require the utilities to file certain information for the board's review. In years in which the board conducts a full proceeding, a rate-regulated utility shall file prepared direct testimony and exhibits in support of a detailed 12-month plan and a 3-year natural gas procurement plan. A utility's procurement plan shall be organized as follows and shall include:

a. An index of all documents and information filed in the plan and identification of the board files in which documents incorporated by reference are located.

b. All contracts and gas supply arrangements executed or in effect for obtaining gas and all supply arrangements planned for the future 12-month and 3-year periods.

c. A description of the utility's natural gas forecasting, procurement, and contracting practices; available supply options; and other available services (e.g., storage services, balancing services).

d. An exhibit detailing the utility's current, 12-month, and 3-year forecasts of total annual throughput by customer class, peak day demand, and anticipated reserve margin on a PGA-year basis.

e. An organizational description of the officer or division responsible for gas procurement and a summary of operating procedures and policies for procuring and evaluating gas contracts.

f. A summary of the legal, regulatory, and commercial actions taken to minimize purchased gas costs.

g. Copies of all studies or investigation reports supporting the utility's testimony or materially considered by the utility in contracting decisions during the plan periods.

h. A complete list of all contracts in effect at the time of the procurement plan filing. The list shall include the contract term, the applicable service, and the contracted quantities.

i. A description of the supply options selected by the utility and an evaluation of the reasonableness and prudence of its contracting and procurement decisions. This evaluation should explain the relationship between forecast and procurement.

19.11(2) *Evaluation of the plan.* The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased gas costs. The board will evaluate the reasonableness and prudence of the gas procurement plan.

19.11(3) *Disallowance of costs.* The board shall disallow any purchased gas costs in excess of costs incurred under responsible and prudent policies and practices. The PGA factor shall be adjusted prospectively to reflect the disallowance.

19.11(4) *Executive summary.* On or before August 1 of each year, each natural gas utility shall file an executive summary and index of all standard and special contracts in effect for the purchase, sale or interchange of gas. The executive summary shall include the following information:

a. The contract number;

b. The start and end date;

c. The parties to the contract;

d. The total estimated dollar value of the contract;

e. A description of the type of service offered (including volumes and price).

This rule is intended to implement Iowa Code section 476.6(15).
[ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.12(476) Flexible rates.

19.12(1) Purpose. This subrule is intended to allow gas utility companies to offer, at their option, incentive or discount rates to their sales and transportation customers.

19.12(2) General criteria.

a. Natural gas utility companies may offer discounts to individual customers, to selected groups of customers, or to an entire class of customers. However, discounted rates must be offered to all directly competing customers in the same service territory. Customers are direct competitors if they make the same end product (or offer the same service) for the same general group of customers. Customers that only produce component parts of the same end product are not directly competing customers.

b. In deciding whether to offer a specific discount, the utility shall evaluate the individual customer's, group's, or class's situation and perform a cost-benefit analysis before offering the discount.

c. Any discount offered should be such as to significantly affect the customer's or customers' decision to stay on the system or to increase consumption.

d. The consequences of offering the discount should be beneficial to all customers and to the utility. Other customers should not be at risk of loss as a result of these discounts; in addition, the offering of discounts shall in no way lead to subsidization of the discounted rates by other customers in the same or different classes.

19.12(3) Tariff requirements. If a company elects to offer flexible rates, the utility shall file for review and approval tariff sheets specifying the general conditions for offering discounted rates. The tariff sheets shall include, at a minimum, the following criteria:

a. The cost-benefit analysis must demonstrate that offering the discount will be more beneficial than not offering the discount.

b. The ceiling for all discounted rates shall be the approved rate on file for the customer's rate class.

c. The floor for the discount sales rates shall be equal to the cost of gas. Therefore, the maximum discount allowed under the sales or transportation tariffs is equal to the nongas costs of serving the customer.

d. No discount shall be offered for a period longer than five years, unless the board determines upon good cause shown that a longer period is warranted.

e. Discounts should not be offered if they will encourage deterioration in the load characteristics of the customer receiving the discount.

f. Customer charges may be discounted.

19.12(4) Reporting requirements. Each natural gas utility electing to offer flexible rates shall file annual reports with the board within 30 days of the end of each 12 months. Reports shall include the following information:

a. Section 1 of the report concerns discounts initiated in the last 12 months. For all discounts initiated in the last 12 months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The cost of alternate fuels available to the customer, if relevant;
- (5) The volume of gas sold to or transported for the customer in the preceding 12 months; and
- (6) A copy of all new or revised flexible-rate contracts executed between the utility and its customers.

b. Section 2 of the report relates to overall program evaluation. For all discounts currently being offered, the report shall include:

- (1) The identity of each customer (by account number, if necessary);
- (2) The total volume of gas sold or transported in the last 12 months to each customer at discounted rates, by month;
- (3) The volume of gas sold or transported to each customer in the same 12 months of the preceding year, by month;
- (4) The dollar value of the discount in the last 12 months to each customer, by month;

(5) The dollar value of volumes sold or transported to each customer for each of the previous 12 months; and

(6) If customer charges are discounted, the dollar value of the discount shall be separately reported.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last 12 months, the report shall include:

(1) Customer identification (by account number, if necessary);

(2) The volume of gas sold or transported in the last 12 months to each customer, by month;

(3) The volume of gas sold or transported to each customer in the same 12 months of the preceding year, by month; and

(4) The dollar value of volumes sold or transported to each customer for each of the past 12 months.

d. No report is required if the utility had no customers receiving a discount during the relevant period and had no customers which were evaluated for the discount and rejected during the relevant period.

19.12(5) Rate case treatment. In a rate case, 50 percent of any identifiable increase in net revenues will be used to reduce rates for all customers; the remaining 50 percent of the identifiable increase in net revenues may be kept by the utility. If there is a decrease in revenues due to the discount, the utility's test year revenues will be adjusted to remove the effects of the discount by assuming that all sales or transportation services or customer charges were made at full tariffed rates for the customer class. Determining the actual amount will be a factual determination to be made in the rate case.

[ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.13(476) Transportation service.

19.13(1) Purpose. This subrule requires gas distribution utility companies to transport natural gas owned by an end user on a nondiscriminatory basis, subject to the capacity limitations of the specific system. System capacity is defined as the maximum flow of gas the relevant portion of the system is capable of handling. Capacity availability shall be determined using the total current firm gas flow, including both system and transportation gas.

19.13(2) End user rights. The end user purchasing transportation services from the utility shall have the following rights and be subject to the following conditions:

a. The end user shall have the right to receive, pursuant to agreement, 100 percent of the gas delivered by it or on its behalf to the transporting utility (adjusted for a reasonable volume of lost, unaccounted-for, and company-used gas).

b. The volumes which the end user is entitled to receive shall be subject to curtailment or interruption due to limitations in the system capacity of the transporting utility. Curtailment of the transportation volumes will take place according to the priority class, subdivision, or category which the end user would have been assigned if it were purchasing gas from the transporting utility.

c. During periods of curtailment or interruption, the party is entitled to a credit equal to the difference between the volumes delivered to the utility and those received by the end user, adjusted for lost, unaccounted-for, and company-used gas. The credit shall be available at any time, within the conditions of the agreement.

d. The end user shall be responsible for all costs associated with any additional plant required for providing transportation services to the end user.

19.13(3) Transportation service charges. Transportation service shall be offered to at least the following classes:

a. Interruptible distribution service with system supply reserve.

b. Interruptible distribution service without system supply reserve.

c. Firm distribution service with system supply reserve.

d. Firm distribution service without system supply reserve.

19.13(4) Transportation service charges and rates. All rates and charges for transportation shall be based on the cost of providing the service.

a. “System supply reserve” service shall entitle the end user to return to the system service to the extent of the interstate pipeline capacity purchased. The charge shall be at least equal to the administrative costs of monitoring the service, plus any other costs (including but not limited to gas demand costs which are directly assignable to the end user).

b. End users without system supply reserve service may only return to system service by paying an additional charge and are subject to the availability of adequate interstate pipeline capacity. An end user wishing to receive transportation service without system supply reserve must pay the utility for the discounted value of any contract between the utility and the end user remaining in effect at the time of beginning transportation service. The discounted values shall include all directly assignable and identifiable costs (including but not limited to gas costs).

c. The utility may require a reconnection charge when an end user receiving transportation service without system supply reserve service requests to return to the system supply. The end user shall return to the system and receive service under the appropriate classification as determined by the utility.

d. The end user electing to receive transportation service shall pay reasonable rates for any use of the facilities, equipment, or services of the transporting utility.

19.13(5) Reporting requirements. A natural gas utility shall be required to provide a copy of information concerning transportation contracts upon request of the board, board staff, or the office of consumer advocate.

19.13(6) Written notice of risks. The utility must notify its large volume users as defined in 19.14(1) contracting for transportation service in writing that unless the customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the large volume user of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The large volume user must acknowledge in writing that it has been made aware of the risks and accepts the risks.

[ARC 3453C, IAB 11/8/17, effective 12/13/17]

199—19.14(476) Certification of competitive natural gas providers and aggregators.

19.14(1) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

“*Competitive natural gas provider*” or “*CNGP*” means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa, and it also means an aggregator as defined in Iowa Code section 476.86. CNGP includes an affiliate of an Iowa public utility. CNGP excludes the following:

1. A public utility which is subject to rate regulation under Iowa Code chapter 476.
2. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code section 437A.3(22)“a”(1), in which the municipally owned utility is located.

“*Competitive natural gas services*” means natural gas sold at retail in this state excluding the sale of natural gas by a rate-regulated public utility or a municipally owned utility as provided in the definition of CNGP in 19.14(1).

“*Large volume user*” means any end user whose usage exceeds 25,000 therms in any month or 100,000 therms in any consecutive 12-month period.

“*Small volume user*” means any end user whose usage does not exceed 25,000 therms in any month and does not exceed 100,000 therms in any consecutive 12-month period.

“*Vehicle fuel provider*” or “*VFP*” means a competitive natural gas provider or aggregator as defined in Iowa Code section 476.86 that owns or operates facilities to sell natural gas as vehicle fuel to a retail end user.

19.14(2) General requirement to obtain certificate. A CNGP shall not provide competitive natural gas services to an Iowa retail end user without a certificate approved by the board pursuant to Iowa Code section 476.87.

19.14(3) *Filing requirements and application process.* Applications for a certificate to provide service as a competitive natural gas provider shall be filed electronically through the board's electronic filing system. Instructions for making an electronic filing can be found on the board's electronic filing system website at efs.iowa.gov. Application forms can be found on the board's website at iub.iowa.gov or may be requested from the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319.

a. An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant may be billed an hourly rate for actual time spent by the board reviewing the application. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

b. Applications to provide service as a competitive natural gas provider pursuant to Iowa Code sections 476.86 and 476.87 shall contain information to reasonably demonstrate that the applicant possesses the managerial, technical, and financial capability sufficient to obtain and deliver the services the competitive natural gas provider or aggregator proposes to offer. Application forms to provide competitive natural gas service to large volume, small volume, and vehicle fuel providers can be accessed on the board's website, iub.iowa.gov. All applications shall include, at a minimum, the following information:

(1) The legal name and all trade names under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Iowa, and the applicant's state of incorporation.

(2) Names, addresses, and telephone numbers of corporate officers responsible for the applicant's operations in Iowa, and a telephone number where the applicant can be contacted 24 hours a day.

(3) Identification of the states and jurisdictions in which the applicant or an affiliate is providing natural gas service.

(4) A commitment to comply with all the applicable conditions of certification contained in subrules 19.14(5) and 19.14(6) and acknowledgment that failure to comply with all the applicable conditions of certification may result in the revocation of the competitive natural gas provider's certificate.

c. A request for confidential treatment of the information required to obtain a competitive natural gas provider certificate may be filed with the board pursuant to 199—subrule 1.9(6).

d. An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments made in the application within 14 days of such change. Any new legal actions or formal complaints are considered material changes in the request. Once certified, CNGPs shall notify the board of any material change in the representations and commitments required for certification within 14 days of such change.

19.14(4) *Deficiencies and board determination.* The board shall act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete applications. Applications with deficiencies that are not cured within the 30-day period will be denied. Applicants will be notified when their application is complete and the 90-day period commences.

19.14(5) *Conditions of certification.* CNGPs shall comply with the conditions set out in this subrule. Failure to comply with the conditions of certification may result in revocation of the certificate.

a. Unauthorized charges. A CNGP shall not charge or attempt to collect any charges from end users for any competitive natural gas services or equipment used in providing competitive natural gas services not contracted for or otherwise agreed to by the end user.

b. Notification of emergencies. Upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service, a CNGP shall immediately contact the appropriate public utility whose facilities may be involved. The CNGP shall also provide the end user with the emergency telephone number of the public utility.

c. *Reports to the board.* Each CNGP shall file a report with the board on April 1 of each year for the 12-month period ending December 31 of the previous year. The report shall be filed on forms provided

by the board, which can be accessed on the board's website, iub.iowa.gov. This information may be filed with a request for confidentiality, pursuant to 199—subrule 1.9(6). For each utility distribution system, the report shall include, at a minimum, total monthly and annual sales volumes, total monthly revenues, and total number of customers served each month as of December 31 of the applicable year.

d. Rescinded IAB 4/28/04, effective 6/2/04.

19.14(6) Additional conditions applicable to CNGPs providing service to small volume end users. All CNGPs when providing service to small volume natural gas end users shall be subject to the following conditions in addition to those listed under subrule 19.14(5):

a. Customer deposits. Compliance with the following provisions shall apply to customers whose usage does not exceed 2,500 therms in any month or 10,000 therms in any consecutive 12-month period.

Customer deposits – subrule 19.4(3).

Interest on customer deposits – subrule 19.4(4).

Customer deposit records – subrule 19.4(5).

Customer's receipt for a deposit – subrule 19.4(6).

Deposit refund – subrule 19.4(7).

Unclaimed deposits – subrule 19.4(8).

b. Bills to end users. A CNGP shall include on bills to end users all the information listed in this paragraph. The bill may be sent to the customer electronically at the customer's option.

(1) The period of time for which the billing is applicable.

(2) The amount owed for current service, including an itemization of all charges.

(3) Any past-due amount owed.

(4) The last date for timely payment.

(5) The amount of penalty for any late payment.

(6) The location for or method of remitting payment.

(7) A toll-free telephone number for the end user to call for information and to make complaints regarding the CNGP.

(8) A toll-free telephone number for the end user to contact the CNGP in the event of an emergency.

(9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.

(10) The tariffed transportation charges and supplier refunds, where a combined bill is provided to the customer.

c. Disclosure. Each prospective end user must receive in writing, prior to initiation of service, all terms and conditions of service and all rights and responsibilities of the end user associated with the offered service. The information required by this paragraph may be provided electronically, at the customer's option.

d. Notice of service termination. Notice must be provided to the end user and the public utility at least 12 calendar days prior to service termination. If the notice of service termination is rescinded, the CNGP must notify the public utility. CNGPs are prohibited from physically disconnecting the end user or threatening physical disconnection for any reason.

e. Transfer of accounts. CNGPs are prohibited from transferring the account of any end user to another supplier except with the consent of the end user. This provision does not preclude a CNGP from transferring all or a portion of its accounts pursuant to a sale or transfer of all or a substantial portion of a CNGP's business in Iowa, provided that the transfer satisfies all of the following conditions:

(1) The transferee will serve the affected end users through a certified CNGP;

(2) The transferee will honor the transferor's contracts with the affected end users;

(3) The transferor provides written notice of the transfer to each affected end user prior to the transfer;

(4) Any affected end user is given 30 days to change supplier without penalty; and

(5) The transferor provides notice to the public utility of the effective date of the transfer.

f. Bond requirement. The board may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy

of the bond or demonstration shall be determined by the board and reviewed by the board from time to time. In determining the adequacy of the bond or demonstration, the board shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the board's financial requirements do not create unreasonable barriers to market entry.

g. Replacement cost for supply failure. Each individual rate-regulated public utility shall file for the board's review tariffs establishing replacement cost for supply failure. Replacement cost revenue will be credited to the rate-regulated public utility's system purchased gas adjustment.

[Editorial change: IAC Supplement 12/29/10; **ARC 1623C**, IAB 9/17/14, effective 10/22/14; **ARC 3453C**, IAB 11/8/17, effective 12/13/17]

199—19.15(476) Customer contribution fund.

19.15(1) *Applicability and purpose.* This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Pursuant to Iowa Code section 476.66, each utility shall maintain a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income home energy assistance program for the payment of winter heating bills.

19.15(2) *Notification.* Each utility shall notify all customers of the customer contribution fund at least twice a year. The method of notice which will ensure the most comprehensive notification to the utility's customers shall be employed. Upon commencement of service and at least once a year, the notice shall be mailed or personally delivered to all customers, or provided by electronic means to those customers who have consented to receiving electronic notices. The other required notice may be published in a local newspaper(s) of general circulation within the utility's service territory. A utility serving fewer than 6,000 customers may publish its semiannual notices locally in a free newspaper, utility newsletter or shopper's guide instead of a newspaper. At a minimum, the notice shall include:

- a.* A description of the availability and the purpose of the fund;
- b.* A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

19.15(3) *Methods of contribution.* The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. A pledge by a customer or other party shall not be construed to be a binding contract between the utility and the pledgor. The pledge amount shall not be subject to delayed payment charges by the utility. Each utility may allow persons or organizations to contribute matching funds.

19.15(4) *Annual report.* On or before September 30 of each year, each utility shall file with the board a report of all the customer contribution fund activity for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund.

[**ARC 3453C**, IAB 11/8/17, effective 12/13/17]

199—19.16(476) Reserve margin.

19.16(1) *Applicability.* All rate-regulated gas utility companies may maintain a reserve of contract services in excess of their maximum daily system demand requirement and recover the cost of the reserve from their customers through the purchased gas adjustment.

19.16(2) *Definitions.*

a. Contract services. The amount of firm gas delivery capacity or delivery services contracted for use by a utility to satisfy its maximum daily system demand requirement, including the planned delivery capacity of the utility-owned liquefied natural gas facilities, but excluding the delivery capacity of propane storage facilities, shall be considered as contract services.

b. Maximum daily system demand requirements. The maximum daily gas demand requirement that the utility forecasts to occur on behalf of its system firm sales customers under peak (design day) weather conditions.

c. Design day. The maximum heating season forecast level of all firm sales customers' gas requirements during a 24-hour period beginning at 9 a.m. The design day forecast shall be the combined

estimated gas requirements of all firm sales customers calculated by totaling the gas requirements of each customer classification or grouping. The estimated gas requirements for each customer classification or grouping shall be determined based upon an evaluation of historic usage levels of customers in each customer classification or grouping, adjusted for reasonably anticipated colder-than-normal weather conditions and any other clearly identifiable factors that may contribute to the demand for gas by firm customers. The design day calculation shall be submitted for approval by the board with the annual PGA filing required by subrule 19.10(2).

19.16(3) *Maximum daily system demand requirements of less than 25,000 Dth per day.* A reserve margin of 9 percent or less in excess of the maximum daily system demand requirements will be presumed reasonable.

19.16(4) *Maximum daily system demand requirements of more than 25,000 Dth per day.* A reserve margin of 5 percent or less in excess of the maximum daily system demand requirements will be presumed reasonable.

19.16(5) *Rebuttable presumption.* All contract services in excess of an amount needed to meet the maximum daily system demand requirements plus the reserve are presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the periodic review of gas proceeding or in a proceeding specifically addressing the issue with an opportunity for an evidentiary hearing. All contract services less than an amount of the maximum daily system demand requirements plus the reserve are presumed to be just and reasonable unless a factual showing to the contrary can be made during the periodic review of gas proceeding or in a proceeding specifically addressing the issue with an opportunity for an evidentiary hearing.

19.16(6) *Allocation of cost of the reserve.* Fifty percent of the reserve cost shall be collected as a demand charge allocation to noncontractual firm customers. The remaining 50 percent shall be collected as a throughput charge on customers excluding transportation customers who have elected no system supply reserve.

199—19.17(476) Incident notification and reports.

19.17(1) *Notification.* A utility shall notify the board immediately, or as soon as practical, of any incident involving the release of gas, failure of equipment, or interruption of facility operations, which results in any of the following:

- a. A death or personal injury necessitating in-patient hospitalization.
- b. Estimated property damage of \$15,000 or more to the property of the utility and to others, including the cost of gas lost.
- c. Emergency shutdown of a liquefied natural gas (LNG) facility.
- d. An interruption of service to 50 or more customers.
- e. Any other incident considered significant by the utility.

19.17(2) *Information required.* The utility shall notify the board by email, as soon as practical, of any reportable incident at dutyofficer@iub.iowa.gov or, when email is not available, by calling the board duty officer at (515)745-2332. The person sending the email or the caller shall leave a call-back number for a person who can provide the following information:

- a. The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.
- b. The location of the incident.
- c. The time of the incident.
- d. The number of deaths or personal injuries and the extent of those injuries, if any.
- e. An initial estimate of damages.
- f. The number of services interrupted.
- g. A summary of the significant information available to the utility regarding the probable cause of the incident and extent of damages.
- h. Any oral or written report required by the U.S. Department of Transportation, and the name of the person who made the oral report or prepared the written report.

19.17(3) *Written incident reports.* Within 30 days of the date of the incident, the utility shall file a written report with the board. The report shall include the information required for telephone notice in subrule 19.17(2), the probable cause as determined by the utility, the number and cause of any deaths or personal injuries requiring in-patient hospitalization, and a detailed description of property damage and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed. Copies of any written reports concerning an incident or safety-related condition filed with or submitted to the U.S. Department of Transportation or the National Transportation Safety Board shall also be provided to the board.

[Editorial change: IAC Supplement 12/29/10; **ARC 1359C**, IAB 3/5/14, effective 4/9/14; **ARC 1623C**, IAB 9/17/14, effective 10/22/14]

199—19.18(476) Capital infrastructure investment automatic adjustment mechanism.

19.18(1) *Eligible capital infrastructure investment.* A rate-regulated natural gas utility may file for board approval a capital infrastructure investment automatic adjustment mechanism to allow recovery of certain costs from customers. To be eligible for recovery through the capital infrastructure investment automatic adjustment mechanism, the costs shall either:

- a.* Meet the following criteria:
 - (1) The costs are beyond the direct control of management;
 - (2) The costs are subject to sudden, important change in level;
 - (3) The costs are an important factor in determining the total cost of capital infrastructure investment to serve customers; and
 - (4) The costs are readily, precisely, and continuously segregated in the accounts of the utility; or
- b.* Be costs for a capital infrastructure investment which:
 - (1) Does not serve to increase revenues by directly connecting the infrastructure replacement to new customers;
 - (2) Is in service but was not included in the gas utility's rate base in its most recent general rate case; and
 - (3) Replaces or modifies existing infrastructure required by state or local government action, to meet state or federal natural gas pipeline safety regulations, or to otherwise enhance safety as approved in advance by the board. The utility shall make an annual filing with the board to seek advance determination of projects that meet this criterion.

19.18(2) *Determination of recovery factor.* The utility may recover a rate of return and depreciation expense associated with eligible capital infrastructure investments described in subrule 19.18(1). The allowed rate of return shall be the approved average cost of debt from the utility's most recent general gas or electric rate review proceeding before the board. Depreciation expense shall be based upon the depreciation rates allowed by the board in the utility's most recent general gas rate review proceeding before the board.

19.18(3) *Recovery procedures.*

a. To recover capital infrastructure investment costs that meet the criteria in paragraph 19.18(1) "a" through an automatic adjustment mechanism, the utility is required to obtain prior board approval of the automatic adjustment mechanism. The utility shall file information in support of the proposed automatic adjustment mechanism that includes:

- (1) A description of the capital infrastructure investment and the costs that are proposed to be recovered through the automatic adjustment mechanism;
- (2) An explanation of why the costs of the capital infrastructure investment are beyond the control of the utility's management;
- (3) An exhibit that shows the changes in level of the costs of the capital infrastructure investment that are proposed to be recovered, both historical and projected;
- (4) An explanation of why these particular capital infrastructure investment costs are an important factor in determining the total cost of capital infrastructure investment to serve customers;
- (5) A description of proposed recovery procedures, if different from the procedures described in paragraph 19.18(3) "c"; and

(6) The length of time that the automatic adjustment mechanism will be in place.

b. Recovery of capital infrastructure investment costs that meet the requirements in paragraph 19.18(1) “*b*” may be made by the utility by filing a proposed tariff with a 30-day effective date no later than April 1 of each year. Only one tariff filing to recover capital infrastructure investment costs shall be made in a 12-month period. After December 13, 2017, any recovery previously approved shall be aligned with an April 1 filing period when the utility next seeks recovery under this rule. The utility shall file information in support of the proposed automatic adjustment rates that includes:

(1) Proof that the capital infrastructure investment is a project that was approved in advance by the board as specified in 19.18(1) “*b*”(3).

(2) The location, description, and costs associated with the project.

(3) The cost of debt from the utility’s most recent general gas or electric rate review proceeding before the board and the applicable depreciation rates from the utility’s most recent general gas rate review proceeding before the board.

(4) The calculations showing the total costs that are eligible for recovery and the rates that are proposed to be implemented.

(5) The utility shall provide supporting documentation, including but not limited to work orders and journal entries, to the board staff or the office of consumer advocate upon request.

c. The utility shall calculate the rates for the recovery of the capital infrastructure investment through the automatic adjustment mechanism over the 12-month period beginning from the effective date of the tariff, unless otherwise ordered by the board. The calculated rate shall include a reconciliation that reconciles the actual revenue recovered through the automatic adjustment mechanism with the costs of the eligible capital infrastructure investments proposed to be recovered over the previous collection period. Unless otherwise specified in an approved tariff, the capital infrastructure investment factor shall be recovered by a fixed monthly surcharge to customers, to be determined by totaling eligible investment costs for the prior calendar year, adjusted for the reconciliation amount, then dividing the total recovery amount among customer classes based upon the utility’s most recent approved cost of service study, dividing the class recovery amounts by the number of months in the recovery period, and then dividing the assigned costs by the number of customers in each respective class. The recovery amount will be limited to annual depreciation plus a return on the undepreciated balance based on the cost of debt.

d. Recovery of a return on and return of capital infrastructure investment that is eligible for recovery pursuant to an automatic adjustment mechanism, including any recoveries approved prior to December 13, 2017, shall continue until the effective date of temporary rates in a subsequent general rate proceeding or, if temporary rates are not implemented, until final rates approved by the board in the utility’s next general rate proceeding. To continue recovery, a utility shall file a proposed tariff each year. Once temporary or final rates are effective, the automatic adjustment mechanism shall reset to zero. No more than five years of capital investment recovery, including any recoveries approved prior to December 13, 2017, shall be allowed between general rate proceedings unless otherwise approved by the board. A utility may continue recoveries allowed under this rule until the investments are fully depreciated or until the utility’s next general rate proceeding.

[ARC 9831B, IAB 11/2/11, effective 12/7/11; ARC 3453C, IAB 11/8/17, effective 12/13/17]

These rules are intended to implement Iowa Code sections 476.1, 476.2, 476.6, 476.8, 476.20, 476.54, 476.66, 476.86, 476.87 and 546.7.

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◊ Two or more ARCs

¹ Effective date of 19.3(10) “a,” “b,” (1), (2), (2)“1,” (3) and (4) delayed 70 days by administrative rules review committee.

² Effective date of 19.4(11), third unnumbered paragraph, delayed 70 days by administrative rules review committee.

³ See IAB, Utilities Division

⁴ Published in Notice portion of IAB 9/10/86; See IAB 10/22/86

⁵ Effective date of 19.4(3) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

CHAPTER 72
IOWA EXPORT TRADE ASSISTANCE PROGRAM

[Prior to 11/15/89, see 261—Ch 56]

[Prior to 7/19/95, see 261—Ch 61]

[Prior to 9/6/00, see 261—Ch 68]

[Prior to 7/4/07, see 261—Ch 132]

261—72.1(78GA,ch197) Purpose. The purpose of the Iowa export trade assistance program is to promote the development of international trade activities and opportunities for exporters in the state of Iowa through encouraging increased participation in international trade shows and trade missions by providing financial assistance to successful applicants.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.2(78GA,ch197) Definitions.

“*Authority*” means the Iowa economic development authority.

“*Exporter*” means a person or business that sells one of the following outside of the United States:

- A manufactured product.
- A value-added product.
- An agricultural product.
- A service.

“*Sales representative*” means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

“*Trade mission*” means a mission event led by the authority or designated representative. Qualified trade missions must include each of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants’ product or service being offered.
- Background information on individual prospects prior to appointments.

Trade missions may also include:

- In-depth briefings on market requirements and business practices for the targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- Technical seminars delivered by the mission participants.

[ARC 9064B, IAB 9/8/10, effective 10/13/10; ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.3(78GA,ch197) Eligible applicants. The export trade assistance program is available to Iowa firms either producing or adding value to products, or both, or providing exportable services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all five of the following criteria:

1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,
2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with an international trade show or trade mission,
3. Have at least one full-time employee or sales representative participate in the trade show or participate in the trade mission,
4. Provide proof of deposit or executed payment agreement for a trade show, or payment of the trade mission participation fee, and
5. Be considered by the authority as compliant with past ETAP contractual agreements.

[ARC 9064B, IAB 9/8/10, effective 10/13/10; ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.4(78GA,ch197) Eligible reimbursements. The authority’s reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed \$4,000 per event. Payments will be made by the authority on a reimbursement basis upon

submission of proper documentation and approval by the authority of paid receipts received by the authority. Reimbursement is limited to the following types of expenses:

72.4(1) Trade shows.

- a. Space rental.
- b. Booth construction at show site.
- c. Booth equipment or furniture rental.
- d. Shipping costs associated with shipment of equipment or exhibit materials to the participant's booth and return.
- e. Booth utility costs.
- f. Interpreter fees for the duration of the trade show.
- g. Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in international areas; and per diem will be paid for only one sales representative.

72.4(2) Trade mission.

- a. Mission participation fee.
- b. Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in international areas and will be paid for only one sales representative.
- c. Shipping costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.
- d. Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.5(78GA,ch197) Applications for assistance. The application for assistance shall be available on the authority's website. To qualify for the export trade assistance program, the applicant shall:

72.5(1) Complete the export trade assistance program's application form and submit it to the authority prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the authority prior to trade event participation.

72.5(2) Exhibit products or services or samples of Iowa products in conjunction with an international trade show or trade mission.

72.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales representative of the applicant.

72.5(4) Pay all expenses related to participation in the trade event and submit eligible, documented expenses for reimbursement from the authority.

72.5(5) Complete the final report form and submit it to the authority before final reimbursement can be made.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the authority. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. When all funds have been committed, applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.7(78GA,ch197) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year. Participants shall not utilize export trade assistance program funds for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

261—72.8(78GA,ch197) Forms. The following forms are available from the authority and will be used by the authority in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report (claim) form,
3. Grant agreement.

[ARC 4375C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement 1999 Iowa Acts, chapter 197, section 1, subsection 4.

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OBJECTION

At its meeting held February 3, 1992, the Administrative Rules Review Committee voted to object to the amendments to rule 261 IAC 61.3“1”* on the grounds those amendments are unreasonable. This rule originally appeared as part of **ARC 2215A**, published in IAB Vol. XIV No. 3 (08-07-91). The previous rule provided export trade assistance to Iowa residents or entities with corporate offices in Iowa. The amendment will provide the assistance to out-of-state entities, as long as they employ fewer than 500 people and 75 percent of those people are employed in Iowa. This rule has now been repromulgated as **ARC 2763A**, but the language of concern to the Committee remains unchanged, and for that reason the objection remains in place.

The Committee believes this amendment is unreasonable because it believes there are ample numbers of Iowa-based corporations that desire to participate in this program and that it is unnecessary to use Iowa-generated revenue to benefit out-of-state corporations.

*Renumbered 68.3“1,” IAB 7/19/95; renumbered 132.3“1,” IAB 9/6/00; renumbered 72.3“1,” IAB 7/4/07.

COLLEGE STUDENT AID COMMISSION[283]

[Prior to 8/10/88, see College Aid Commission[245]]

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CHAPTER 1
ORGANIZATION AND OPERATION
[Prior to 8/10/88, see College Aid Commission, 245—Ch 12]

283—1.1(261) Purpose. This chapter describes the organization, operation, and location of the Iowa college student aid commission (hereinafter generally referred to as the commission, or the ICSAC) and describes the means by which any interested person may obtain information and make submittals or requests.

283—1.2(261) Organization and operations.

1.2(1) Location. The commission is located at 475 S.W. Fifth Street, Suite D, Des Moines, Iowa 50309-4608; telephone (515)725-3400; Internet site www.iowacollegeaid.gov. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

1.2(2) The commission. The commission consists of 15 members and functions under the leadership of a chairperson elected by the membership. Nine members are appointed by the governor to serve four-year terms. Four of the governor's appointees represent the general public, one represents parents of Iowa postsecondary students, one represents practitioners licensed under Iowa Code chapter 272, one represents Iowa independent colleges and universities, one represents Iowa community colleges, and one represents Iowa postsecondary students. One member is appointed by the board of regents. The president of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives each appoint one ex officio, nonvoting commission member. The director of the department of education serves as a continuous member of the commission and may appoint a designee to represent the department of education.

1.2(3) Meetings. The commission shall meet at regular intervals at least six times annually, but not more than eight times in person annually.

a. The chairperson of the commission presides at each meeting. Members of the public may be recognized at the discretion of the chairperson. All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21.

b. The commission shall give advance public notice of the time and place of each commission meeting. The notice will include the specific date, time, and place of the meeting.

c. A quorum shall consist of two-thirds of the voting members of the commission. When a quorum is present, a position is carried by an affirmative vote of the majority of commission members eligible to vote.

d. A specific time is set aside at each meeting for the public to address the commission. As a general guideline, a limit of five minutes will be allocated for each of these presentations. If a large group seeks to address a specific issue, the chairperson may limit the number of speakers. Members of the public who wish to address the commission during this portion of the meeting are required to notify the commission's administrative secretary prior to the meeting. The person's name and the subject of the person's remarks must be provided. To accommodate maximum public participation, members of the public are encouraged to submit requests at least 72 hours in advance of the meeting.

1.2(4) Minutes. The minutes of all commission meetings are recorded and kept by the executive director in the commission office. Upon approval by the commission, minutes are posted on the commission's Internet site.

1.2(5) Records. The records of all business transacted and other information with respect to the operation of the commission are public records and are on file in the commission office. All records, except statements specified as confidential under these rules, are available for inspection during regular business hours. Copies of records up to 25 pages in number may be obtained without charge. The cost of reproduction will be charged for pages in excess of 25. Digital media will be provided for a fee equal to the cost of the physical device provided. The charge may be waived by the executive director.

1.2(6) Submission and requests. Inquiries, submissions, petitions, and other requests directed to the commission may be made by letter addressed to the executive director at the address listed in subrule

1.2(1). Any person may petition for a written or oral hearing before the commission. All requests for a hearing must be in writing and state the specific subject to be discussed and the reasons a personal appearance is necessary if one is requested.

1.2(7) *Advisory councils.* Rescinded IAB 2/19/14, effective 3/26/14.

[ARC 9391B, IAB 2/23/11, effective 3/30/11; ARC 1318C, IAB 2/19/14, effective 3/26/14; ARC 3699C, IAB 3/28/18, effective 5/2/18; see Delay note at end of chapter; ARC 3844C, IAB 6/20/18, effective 5/18/18; ARC 3854C, IAB 6/20/18, effective 7/25/18; ARC 4373C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code section 17A.3(1) “a” and “b” and chapter 261.

[Filed 1/7/77, Notice 10/20/76—published 1/26/77, effective 3/2/77]

[Filed 2/16/79, Notice 11/1/78—published 3/7/79, effective 4/11/79]

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[Filed 1/29/91, Notice 12/12/90—published 2/20/91, effective 3/27/91]

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[Filed 1/30/03, Notice 12/11/02—published 2/19/03, effective 3/26/03]

[Filed ARC 9391B (Notice ARC 9271B, IAB 12/15/10), IAB 2/23/11, effective 3/30/11]

[Filed ARC 1318C (Notice ARC 1123C, IAB 10/16/13), IAB 2/19/14, effective 3/26/14]

[Filed ARC 3699C (Notice ARC 3516C, IAB 12/20/17), IAB 3/28/18, effective 5/2/18]¹

[Filed Emergency ARC 3844C, IAB 6/20/18, effective 5/18/18]

[Filed ARC 3854C (Notice ARC 3711C, IAB 3/28/18), IAB 6/20/18, effective 7/25/18]

[Filed ARC 4373C (Notice ARC 4080C, IAB 10/24/18), IAB 3/27/19, effective 5/1/19]

¹ May 2, 2018, effective date of 1.2(3) [ARC 3699C] delayed 70 days by the Administrative Rules Review Committee at its meeting held April 6, 2018.

CHAPTER 34

REGISTERED NURSE AND NURSE EDUCATOR LOAN FORGIVENESS PROGRAM

Rescinded **ARC 4374C**, IAB 3/27/19, effective 5/1/19

CHAPTER 3 FAIR INFORMATION PRACTICES

The racing and gaming commission adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to fair information practices which are printed in the first volume of the Iowa Administrative Code.

491—3.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “racing and gaming commission”.

491—3.3(17A,22) Requests for access to records.

3.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “Administrator”. In lieu of the words “(insert agency name and address)”, insert “Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309”.

3.3(2) Office hours. In lieu of the words “(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. Monday through Friday except legal holidays”.

3.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “30 minutes”.
[ARC 0734C, IAB 5/15/13, effective 6/19/13]

491—3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “racing and gaming commission”.

491—3.9(17A,22) Disclosures without the consent of the subject.

3.9(1) Open records are routinely disclosed without the consent of the subject.

3.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 491—3.10(17A, 22) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

491—3.10(17A,22) Routine use. *“Routine use”* means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

3.10(1) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

f. Information transferred to any originating agency when racing and gaming commission has completed the authorized audit, investigation, or inspection.

3.10(2) Reserved.

491—3.11(17A,22) Consensual disclosure of confidential records.

3.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 491—3.7(17A,22).

3.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

3.11(3) *Sharing information.* Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 261 or 598.

491—3.12(17A,22) Release to subject.

3.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 491—3.6(17A,22). The commission need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

3.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

491—3.13(17A,22) Availability of records.

3.13(1) Agency records are open for public inspection and copying unless otherwise provided by rule or law.

3.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Exempt records under Iowa Code section 22.7.

- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “d.”
- f. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by commission staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.
 (Iowa Code sections 17A.2 and 17A.3)
- g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.
- h. Criminal investigative reports. (Iowa Code section 22.7(5))
- i. Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections 99D.7(9), 99D.19(3), 99F.4(6) and 99F.12(4))
- j. Personnel files and employee records. Information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).
- k. Security plans, surveillance system plans and records, network audits, internal controls, and compliance records of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2, 17A.3, 22.7(18), 99D.19(3) and 99F.12(4))
- l. Promotional play receipts records and marketing expenses. (Iowa Code sections 99D.19(3) and 99F.12(4))
- m. Patron and customer records. (Iowa Code sections 99D.19(3) and 99F.12(4))
- n. Supplemental schedules to the certified audit that are obtained by the commission in connection with the annual audit under Iowa Code sections 99D.20 and 99F.13. (Iowa Code sections 99D.19(3) and 99F.12(4))
- o. Names, social security numbers and any other personally identifiable information regarding persons who have voluntarily excluded themselves and are a part of the interactive Internet site maintained by the commission. (Iowa Code sections 99D.7(23) and 99F.4(22) as amended by 2018 Iowa Acts, House File 2349)

[ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—3.14(17A,22) Personally identifiable information. The commission maintains systems of records which contain personally identifiable information.

3.14(1) Board of stewards or gaming board hearings and contested case records. Records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the board of stewards or gaming board hearing or contested case records as well as summary lists of enforcement activities.

Records are collected by authority of Iowa Code chapters 99D and 99F. None of the information stored in a data processing system is compared with information in any other data processing system.

3.14(2) Occupational licensing. Records associated with occupational licensing conducted under Iowa Code chapters 99D and 99F are maintained by this commission. The licensing system of records includes numerous files and crossfiles which include but are not limited to: computer storage of licensing records and photos, fingerprint cards, and license applications. The records associated with occupational

licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator's designee. The information stored in a data processing system is not compared with information in any other data processing system.

3.14(3) *List of contested cases and stewards' hearings.* The commission may utilize a listing of contested case and stewards' hearings furnished by a national organization and provide individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

These rules are intended to implement Iowa Code section 22.11 and chapters 99D and 17A.

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CHAPTER 5
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 20 and 25]

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

5.2(1) The audit of financial transactions and condition of licensee's operation shall include:

- a. An internal control letter;
- b. Documentation that the county board of supervisors selected the auditing firm;
- c. A balance sheet; and
- d. A profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies.

5.2(2) If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report.

5.2(3) In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(4) An engagement letter for the audit between the licensee and auditing firm shall be available upon request. The engagement letter requirement does not apply to the licensed qualified sponsoring organization. Conditions of engagement for the audit shall include, at a minimum, the following requirements:

- a. The auditing firm shall report any material errors, irregularities or illegal acts that come to the firm's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct that apply to the auditing firm. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.
- b. The auditing firm shall inform the commission in writing of matters that come to the firm's attention that represent significant deficiencies in the design or operation of the internal control structure.
- c. The audit supervisor or an audit staff member conducting the audit must have experience or training in the gaming industry.
- d. The auditing firm agrees to respond timely to all reasonable requests of successor auditors.
- e. The auditing firm agrees, if requested by the commission, to provide licensee management and the commission with recommendations designed to help the licensee make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

5.2(5) Consolidated financial statements may be filed by commonly owned or operated establishments with the following conditions:

a. The consolidated financial statements shall include in the supplemental schedule, or elsewhere as determined by the licensee and auditing firm, for each licensee: balance sheets, statements of operations, statements of cash flows, schedules of operating expenses and schedules of adjusted gross revenue and taxes and fees paid to governmental agencies.

b. The auditing firm must audit and issue a report on the separate financial statements that expresses an opinion for each individual entity licensed in Iowa.

c. Any internal audit staff assisting with the audit shall report any material errors, irregularities or illegal acts that come to the staff's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

d. All other requirements in this rule are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

5.2(6) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to the state, city, and county; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

5.2(7) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

b. A report on whether material weaknesses in internal accounting control exist. A report shall be filed for each individual entity licensed in Iowa if a consolidated audit is provided.

5.2(8) Internal control records, compliance records, marketing expenses, and supplemental schedules included in the annual reports shall be kept confidential, as outlined in Iowa Code section 99F.12(4).

[ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) *Maintenance of premises and facilities.* Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) *Facilities for commission.* Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) *Sanitary facilities for patrons.* Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

5.4(4) *First-aid room.*

a. During all hours of operation, each licensee shall equip and maintain adequate first-aid facilities and have, at a minimum, one employee trained in CPR, first aid, and the use of the automated external defibrillator (AED). During live racing at horse racetracks and while excursion gambling boats are cruising, the licensee shall have present either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician.

b. All individuals specified under paragraph 5.4(4) "a" must be currently licensed or certified, including active status, in accordance with the requirements of the Iowa department of public health.

c. Each licensee is required to have a properly functioning and readily accessible AED at the licensee's facility.

5.4(5) Security force.

a. *Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present as outlined in the facility's security plan approved by the commission. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

b. *Employ adequate security.* Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

c. *Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. *Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) Firearms possession within licensed facility.

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a licensed facility without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that licensed facility.

b. Each licensee shall post in a conspicuous location at each entrance a sign that may be easily read stating, "Possession of any firearm within the licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) Video recording. Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. "Gambling activities" means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncashed gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator's designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

d. A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.

e. A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

5.4(8) Commission approval of contracts and business arrangements.

a. Qualifying agreements.

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) to obtain gambling games and implements of gambling, as defined by rule 491—11.1(99F), are exempt from submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity, a unit of government for the payment of taxes, or an entity that provides water, sewer, gas or electric utility services to the facility.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent or if the commission approval date of an ongoing contract is more than five years old.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises.

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;
2. The amount and source of funds;
3. The nature and amount of security and collateral provided;
4. The specific nature and purpose of the transaction; and
5. The term sheet or executive summary of the transaction.

(3) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8) "b"(4) or to comply with 5.4(8) "a"(1)"3."

b. Purpose of review. The commission conducts reviews to serve the public interest to ensure that:

- (1) Gaming is free from criminal and corruptive elements.
- (2) Gaming-related funds are directed to the lawful recipient.
- (3) Gaming profits are not improperly distributed.
- (4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.
2. Goods are distributed through a distributor located in Iowa.
3. Goods are sold by a retailer/wholesaler located in Iowa.
4. Resources are produced or processed in Iowa.
5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

c. Related parties. Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

(1) Any corporate officer or member of a facility's board of directors.

(2) Any owner with more than a 5 percent interest in a facility.

(3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

d. Review criteria. The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) Checks. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) Taxes and fees.

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Submission of taxes and fees.

(1) All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. Each day on the report shall be an accurate representation of the gaming activities. A week shall begin on Monday and end on Sunday.

(2) The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end.

(3) Pursuant to Iowa Code section 99F.1(1), taxes from promotional play receipts that are received within the same gaming week but after the date when the limit set forth in the definition of "adjusted gross receipts" is exceeded, as determined by the administrator, will be credited to each facility in the next available gaming week within the same fiscal year.

c. Calculation of promotional play receipts. For the purpose of calculating the amount of taxes received from promotional play receipts during a fiscal year, the commission will consider promotional play receipts as taxed in proportion to total adjusted gross receipts for each gaming day.

5.4(11) Rate of tax revenue. Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

5.4(12) Problem gambling.

a. The holder of a license to operate gambling games and the holder of a license to accept simulcast wagering shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers;

(2) Comply with the process established by the commission to allow a person to be voluntarily excluded from the gaming floor of an excursion gambling boat, from the wagering area as defined in

Iowa Code section 99D.2, and from the gaming floor of all other licensed facilities or gambling activities regulated under Iowa Code chapters 99D and 99F; and

(3) Allow persons to be voluntarily excluded for five years or life from all facilities on a form prescribed by the commission. Each facility will disseminate information regarding the exclusion to all other licensees and the commission.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

d. Money forfeited by a voluntarily excluded person pursuant to Iowa Code sections 99D.7(23) and 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

5.4(13) Records regarding ownership.

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.
5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
6. A complete record of all transfers of stock.
7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
8. A record, by stockholder, of all dividends distributed by the corporation.
9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.
2. A record of the withdrawals of partnership funds or assets.
3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.
4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.
2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.
3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities

and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) *Retention, storage, and destruction of books, records, and documents.*

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

- (1) Prepared and maintained in a complete and accurate form.
- (2) Retained at a site approved by the administrator until audited.
- (3) Held immediately available for inspection by the commission during business hours of operations.
- (4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) *Remodeling.* For any construction that changes the specific function of a public space of the facility, the licensee must first submit plans to and receive the approval of the administrator.

5.4(16) *Officers, agents, and employees.* Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed persons in nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

5.4(17) *Designated gaming floor.* The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

5.4(18) *State fire and building codes.*

a. Barges, as defined in 5.6(1) "c," and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

b. If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

c. If a proposed new or renovated facility is subject to both paragraphs "a" and "b," a single submission of construction plans and documents to the building code commissioner, with a cover letter stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs "a" and

“b” shall have received approval from both the fire marshal and the building code commissioner prior to construction.

5.4(19) *Gambling setoff.* Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F.

5.4(20) *Shelf application for debt.*

a. The commission may grant approval of a shelf application for a period not to exceed three years.

b. Licensees whose parent company has issued publicly traded debt or publicly traded securities may apply to the commission for a shelf approval of debt transactions if the parent company has:

(1) A class of securities listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automatic Quotation System (NASDAQ) or has stockholders' equity in the amount of \$15 million or more as reported in the parent company's most recent report on Form 10-K or Form 10-Q filed with the Securities and Exchange Commission (SEC) immediately preceding application; and

(2) Filed all reports required by the SEC.

c. The application shall be in writing and shall contain:

(1) Proof of qualification to make the application in accordance with the criteria of this subrule.

(2) A statement of the amount of debt sought to be approved and the intended use of potential proceeds.

(3) Duration sought for the shelf approval.

(4) Financing rate sought during shelf approval.

(5) Evidence of signature by authorized representative of the licensee under oath.

(6) Other supplemental documentation requested by the commission or commission representative following the initial submission.

d. Once an application is approved by the commission:

(1) The licensee shall notify the commission representative of all debt transactions within ten days of consummation, including subsequent amendments and modifications of debt transactions, and provide executed copies of the documents evidencing the transactions as may be required.

(2) The commission representative may rescind a shelf approval without prior written notice. The rescission shall be in writing and set forth the reasons for the rescission and shall remain in effect until lifted by the commission upon the satisfaction of any such terms and conditions as required by the commission.

5.4(21) *Network security.*

a. The licensee shall biennially submit the results of an independent network security risk assessment to the administrator for review, subject to the following requirements:

(1) The testing organization must be independent of the licensee and shall be qualified by the administrator.

(2) The network security risk assessment shall be conducted no later than 90 days after the start of the licensee's fiscal year in each year an assessment is required.

(3) Results from the network security risk assessment shall be submitted to the administrator no later than 90 days after the assessment is conducted.

b. At the discretion of the administrator, additional network security risk assessments may be required.

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491—5.5(99D) *Pari-mutuel uniform requirements.*

5.5(1) *Insect and rodent control.* The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

5.5(2) Results boards, totalizators required. Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) Photo finish camera. A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) Electric timing device. Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) Official scale. The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) Lighting. Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) Fencing. The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) Guest passes. The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

5.5(9) Stewards. There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

5.5(10) Purse information. Each licensee shall provide to the commission at the close of each racing meet the following purse information:

a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

5.5(11) Designated wagering area. The designated wagering area is an area of a racetrack, designated by a licensee and approved by the commission, in which a licensee may receive from a person wagers of money on a horse or dog in a race selected by the person making the wagers as designated by the commission. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

5.5(12) Mobile pari-mutuel wagering. Pari-mutuel wagering shall be allowed outside the designated wagering area using mobile pari-mutuel tellers with portable wagering devices and by any other method approved in writing by the commission.

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491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) Excursion gambling boat.

- a. Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.
- b. Excursion boat.* A self-propelled, floating “vessel” as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.
- c. Moored barge.* “Barge” means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

5.6(2) Excursions.

- a. Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat’s operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).

b. Dockside completion of excursions. If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. Notification. If an excursion is not completed due to reasons specified in paragraph 5.6(2) “b,” a commission representative shall be notified as soon as is practical.

5.6(3) Drug testing of boat operators. Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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[◇] Two or more ARCs

¹ Effective date of 5.1(5)“c” delayed until the end of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 1998.

CHAPTER 6 OCCUPATIONAL AND VENDOR LICENSING

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

491—6.1(99D,99F) Definitions.

“Applicant” means an individual applying for an occupational license.

“Beneficial interest” means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

“Board” means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

“Commission” means the Iowa racing and gaming commission.

“Commission representative” means a gaming representative, steward, or any person designated by the commission or commission administrator.

“Conviction” means the act or process of judicially finding someone guilty of a crime; the state of a person’s having been proved guilty; the judgment that a person is guilty of a crime or criminal offense, which includes a guilty plea entered in conjunction with a deferred judgment, and a juvenile who has been adjudicated delinquent. The date of conviction shall be the date the sentence and judgment is entered.

“Deceptive practice” means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“Jockey” means a person licensed to ride a horse in a race.

“Kennel/stable name” means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

“Licensee” means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license for a person to work in the pari-mutuel, gambling structure, or excursion gambling boat industry in Iowa.

“Occupation” means a license category listed on the commission’s occupational license application form.

“Owner” means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

“Rules” means the rules promulgated by the commission to regulate the racing and gaming industries.

“Theft” includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;
2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner’s rights in such property;
3. Misappropriation or misuse of property the person holds in trust for another; or
4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 6.5(99D,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

“Year” means a calendar year.

491—6.2(99D,99F,252J) Occupational licensing.

6.2(1) All persons participating in any capacity at a racing or gaming facility, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. License applicants may be required to furnish to the commission a set of fingerprints and may be required to be refingerprinted or rephotographed periodically.

b. License applicants must supply current photo identification and proof of their social security number and date of birth.

c. License applicants must complete and sign the application form prescribed and published by the commission. An incomplete application shall not be processed. The application shall state the full name, social security number, residence, date of birth, and other personal identifying information of the applicant that the commission deems necessary. The application shall include, in part, whether the applicant has any of the following:

(1) A record of conviction of a felony or misdemeanor, including a record involving the entry of a deferred judgment and adjudications of delinquency;

(2) An addiction to alcohol or a controlled substance;

(3) A history of mental illness or repeated acts of violence;

(4) Military convictions;

(5) Adjudication of delinquency; or

(6) Overdue income taxes, fines, court-ordered legal obligations, or judgments.

d. License applicants for designated positions of higher responsibility may be required to complete a division of criminal investigation (DCI) background form.

e. A fee set by the commission shall be assessed to each license applicant. Once a license is issued, the fee cannot be refunded.

f. License applicants must pay an additional fee set by the Federal Bureau of Investigation (FBI) and by the department of public safety (DCI and bureau of identification) to cover the cost associated with the search and classification of fingerprints.

g. All racing and gaming commission fees for applications or license renewals must be paid by applicants or licensees before a license will be issued or renewed or, if the applicant is an employee of a facility, the commission fees will be directly billed to the facility.

h. An applicant who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

i. Participation in racing and gaming in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. All licenses are conditional until completion of a necessary background investigation including, but not limited to, fingerprint processing through the DCI and the FBI and review of records on file with national organizations, courts, law enforcement agencies, and the commission.

k. Any licensee who allows another person use of the licensee's license badge for the purpose of transferring any of the benefits conferred by the license may be fined, have the license suspended or revoked, or be subject to any combination of the above-mentioned sanctions. No license shall be transferable and no duplicate licenses shall be issued except upon submission of an application form and payment of the license fee.

l. It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representatives and to cooperate with commission representatives in the performance of their duties. A refusal by any person to comply with a request for information from a commission representative shall be a basis for fine, suspension, denial, revocation, or disqualification.

m. Non-U.S. citizens must supply documentation authorizing them to work in the United States or supply documentation demonstrating compliance with the North American Free Trade Agreement.

n. Portions of all completed applications accepted by the commission are confidential. The following persons have the explicit right to review all information contained on the application: the applicant, all commission officials and employees, the track steward, and DCI agents or other law enforcement officers serving in their official capacity.

o. A license may not be issued or held by an applicant who is unqualified, by experience or otherwise, to perform the duties required.

p. A license may not be issued to applicants who have not previously been licensed in the following occupations except upon recommendation by the commission representative: trainers, assistant trainers, jockeys, apprentice jockeys, exercise persons, and other occupations the commission may designate. The commission representative may, for the purpose of determining a recommendation under this subrule, consult a representative of the facility, horsemen, or jockeys.

6.2(2) All facility board members shall undergo a background investigation and be licensed immediately upon appointment.

6.2(3) Multiple license restrictions.

a. A person may work outside the licensed occupation as long as the person is licensed in an equal or higher occupation.

b. In horse racing only, the following restrictions apply:

(1) A person licensed as a jockey or veterinarian may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the commission representative.

6.2(4) Application endorsements. The responsibility of licensing an employee rests with the employer. Therefore, a license may not be issued to any employee unless the application includes prior endorsement of the facility's authorized representative. All facilities must submit a list of representatives authorized to sign applications. This list shall not exceed six names. This authorization list shall be sent to the commission licensing office associated with each facility.

6.2(5) An applicant who has not held a license for the previous calendar year shall be considered a first-time applicant.

6.2(6) Interim identification badge.

a. All interim identification badges issued by a facility must be recorded in a logbook, which is available for inspection by commission or DCI representatives. The logbook must reflect the following information: date issued; user's name and date of birth (verified by photo ID); occupation; badge number; issuer; time issued; and time returned. Badges shall only be issued on a daily basis and must be returned before the employee leaves facility premises. A badge shall be effective only until the commission licensing office's next day of business, and may not be used to avoid obtaining a duplicate license.

b. A badge shall only be issued if:

(1) An employee is hired during a time that the commission licensing office is closed; or

(2) An employee is not in possession of the employee's occupational license.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—6.3(99D,99F) Waiver of privilege. An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

491—6.4(99D,99F) License acceptance.

6.4(1) *Occupational license (license).* The license shall be displayed in a conspicuous manner on the licensee's clothing at all times while the licensee is on duty unless otherwise permitted by the commission representative. A licensee is prohibited from defacing, altering, or modifying a license.

6.4(2) *Knowledge of rules.* By acceptance of a license from the commission, the licensee agrees to follow and comply with the rules of the commission and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's website at irgc.iowa.gov.

6.4(3) Search and seizure. Acceptance of a license from the commission by any licensee is deemed consent to search and inspection by a commission or DCI representative and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

6.4(4) Misuse of license. No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission except under subrule 6.2(6). The commission shall exercise the power to regulate the conduct of all persons holding licenses or participating in racing or gaming.
[ARC 2927C, IAB 2/1/17, effective 3/8/17]

491—6.5(99D,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine. The commission or commission representative shall deny an applicant a license or, if already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

6.5(1) Does not qualify under the following screening policy:

a. Applicants must be at least 18 years of age to work in areas where gaming or wagering is conducted.

b. Applicants must be at least 16 years of age to be eligible to be licensed to work for a trainer of racing animals.

c. A license shall be denied if, within the last five years, an applicant has had:

- (1) A felony conviction;
- (2) A conviction for an offense involving theft or fraudulent practice in excess of \$500;
- (3) A conviction for an offense involving the use of an alias in connection with fraud; or
- (4) A conviction for an offense involving ownership, operation, or an interest in any bookmaking or other illegal enterprise or if the applicant is or has been connected with or associated with any illegal enterprise.

If the conviction occurred more than five years before application, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.

d. Unless sufficient evidence of rehabilitation exists, a license shall be denied if any applicant has had:

- (1) A conviction of a serious or aggravated misdemeanor or the equivalent; or
- (2) Multiple convictions of simple misdemeanors.

e. A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction would disqualify the applicant and the commission representative determines that the applicant poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F.

f. A license shall be denied if the applicant has an addiction to alcohol or a controlled substance without sufficient evidence of rehabilitation, has a history of mental illness without demonstrating successful treatment by a licensed medical physician, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

g. A license may be temporarily denied or a probationary license may be issued until outstanding, overdue court-ordered obligations are satisfied. These obligations include, but are not limited to, criminal or civil fines, state or federal taxes, or conditions imposed upon the applicant by a court of law that the applicant has failed to meet in a timely manner.

h. A license may be denied if an applicant is ineligible to participate in gaming in another state and it would not be in the best interest of racing or gaming to license the applicant in Iowa. A license shall be denied if an applicant is ineligible to participate in racing in another state whose regulatory agency is recognized by and reciprocates in the actions of this state.

i. A license shall be denied and not reinstated if an applicant has been denied patron privileges by order of the commission.

j. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under one or more of the provisions set forth in paragraphs “a” through “i” above. In other

cases of falsification, a license may be issued and the applicant shall be subject to a suspension, fine, or both.

k. A license shall be denied if an applicant is not of good repute or moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character or reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation or character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

6.5(2) Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing or gaming:

a. Issuance or passing of bad checks. No person shall write, issue, make, or present any check in payment for any license fee, nomination fee, entry fee, starting fee, or purse payment when that person knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which it is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account.

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly, or in part, upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

c. Timely payment. Should an owner fail to make timely payment of any jockey fee, nomination fee, entry fee, starting fee, or any other reasonable charge normally payable to the facility, the facility shall notify the commission representatives who shall in turn give notice to the owner that a hearing will be held where the owner will be required to show cause why the license should not be suspended for failure to make the required payments.

6.5(3) Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing or gaming.

b. Failing to report any bribe or solicitation as in 6.5(3) "a" above.

c. Soliciting by any licensee, except the facility, of bets by the public.

d. Violation of any law of the state or rule of the commission, or aiding or abetting any person in the violation of any such law or rule.

e. Theft or deceptive practice of any nature on the premises of a facility.

f. Giving under oath any false statement or refusing to testify, after proper notice, to the commission representative about any matter regulated by the commission, except in the exercise of a lawful legal privilege.

g. Failing to comply with any request for information or any order or ruling issued by the commission representative pertaining to a racing or gaming matter.

h. Disorderly or offensive conduct; use of profane, abusive, or insulting language to, or interference with, commission representatives or racing or gaming officials while they are discharging their duties.

i. Conduct in Iowa or elsewhere has been dishonest, undesirable, detrimental to, or reflects negatively on, the integrity or best interests of racing and gaming.

j. Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility premises.

k. Discontinuance of or ineligibility for activity for which the license was issued.

l. Possessing a firearm on facility property without written permission from the commission representative.

m. Improperly influencing or attempting to improperly influence the results of a race or a gambling game, singularly or in combination with any person.

n. Failing to report any attempt to improperly influence the result of a race or a gambling game as in 6.5(3) “*m*” above.

o. Having had two rulings related to attempts to affect a race result or odds (rulings for electrical devices, serious positives, for example) in a lifetime or one ruling within the last three years. A license may be issued if one ruling has occurred outside of three years if sufficient evidence of rehabilitation exists. A license may be denied if a lengthy record of rulings from other jurisdictions exists.

p. Possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any container designed to hold an injectable substance (narcotics, medications, drugs, or substances which could be used to alter the speed of racing animals) by anyone other than a veterinarian licensed by the commission. Notwithstanding the provisions of this subrule, any person may have possession of any chemical or biological substance for the person’s own treatment within a restricted area, provided that, if the chemical substance is prohibited from being dispensed without a prescription by any federal law or law of this state, the person is in possession of documentary evidence that a valid prescription has been issued to the person. Notwithstanding the provisions of this subrule, any person may have in possession within any restricted area any hypodermic syringe or needle for the purpose of self-administering to the person a chemical or biological substance, provided that the person has notified the commission representatives of the possession of the device, the size of the device, and the chemical substance to be administered and has obtained written permission for possession and use from the commission representative. A restricted area is a designated area for sample collection, paddock, racetrack, or any other area where officials carry out the duties of their positions.

q. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing an animal to suffer unnecessary pain.

r. Offering or receiving money or other benefit for withdrawing a racing animal from a race.

s. Making a wager for a jockey by any person other than the owner or trainer of the horse ridden by the jockey.

t. Making a wager for a jockey on a horse by an owner or trainer other than that ridden by the jockey. This shall not be construed to include bets on another horse in combination with the horse ridden by the jockey in multiple wagering bets.

u. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.

v. Entering or starting a racing animal known or believed to be ineligible or disqualified.

w. Possessing any device designed to increase or decrease the speed of a racing animal during a race other than an ordinary riding whip without written permission from the commission representative.

x. Communicating with or contacting a person who is voluntarily excluded pursuant to Iowa Code chapter 99D or 99F for gaming-related activities.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—6.6(99D,99F) Applications for license after denial, revocation, or suspension.

6.6(1) Any person whose license was denied or revoked may reapply for a license in accordance with the commission’s rules governing applications. However, the applicant must satisfy the following conditions:

a. The applicant shall bear the burden of proof of establishing satisfaction with all license criteria and shall provide proof of satisfaction of any terms or conditions imposed as a part of the commission’s order denying or revoking the license;

b. The applicant shall allege facts and circumstances establishing, to the commission’s satisfaction, sufficient evidence of rehabilitation and that the basis for the denial or revocation no longer exists;

c. The applicant shall establish that the public interest and the integrity of racing and gaming would not be adversely affected if a license is granted; and

d. If the license was revoked, a new application shall not be filed until five years have elapsed from the date of the order of revocation.

6.6(2) Any person whose license was suspended for 365 days or more may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above. If a person’s license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above prior to that individual’s participating in racing or gaming.
[ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—6.7(99D,99F) Probationary period placed on a license. The commission representative or the board may place a probationary period on a license. The terms of the probationary period shall include the effective dates, conditions placed on the licensee and any penalty for failure to follow those conditions, including fine, suspension, denial, or revocation.

491—6.8(99D,99F) Duration of license. A license issued by the commission is valid for three calendar years. The license shall expire at the end of the third calendar year, unless an extension is granted by the administrator.
[ARC 2468C, IAB 3/30/16, effective 5/4/16]

491—6.9(99D,99F) Licensed employees moving from one location to another.

6.9(1) Once an applicant obtains an occupational license from the commission and is in good standing, the applicant is eligible to work at any of the facilities in the state of Iowa.

6.9(2) When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office before the person(s) begins working. The list should contain the license number, name, social security number, and birth date of each person hired.
[ARC 3608C, IAB 1/31/18, effective 3/7/18]

491—6.10(99D,99F) Required report of discharge of licensed employee. Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission office including the name and occupation of the discharged licensee.

491—6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit.

6.11(1) Upon the commission’s receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.11(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.11(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.11(4) Upon receipt of a withdrawal of a certificate of noncompliance from the child support recovery unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.11(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission.

6.12(1) Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.12(2) The effective date of the suspension or revocation, or denial of the issuance or renewal of a license, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.12(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.12(4) Upon receipt of a withdrawal of a certificate of noncompliance from the college student aid commission, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.12(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.13(99D,99F,272D) Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue.

6.13(1) Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.13(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.13(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.13(4) Upon receipt of a withdrawal of a certificate of noncompliance from the centralized collection unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.13(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.14(99D,99F) Vendor's license.

6.14(1) A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility.

6.14(2) An applicant for a vendor's license must complete the appropriate commission form. An authorized representative from the facility for which the vendor wishes to do continuous business must

sign the form. A letter from the facility authorizing the vendor to do business shall replace a signature on the application form.

6.14(3) Any employee who works for a licensed vendor and will be supplying the goods or services to the facility must have a vendor employee license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

6.14(4) Rescinded IAB 9/29/04, effective 11/3/04.
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.15(99D,99F) Applicability of rules—exceptions. Rules pertaining to and rulings against licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in racing or gaming by the affected person circumvents the intent of the rule or affects the ruling by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or a person ineligible to participate in a particular activity.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.16(99D) Disclosure of ownership of racing animals. All entities of ownership (individual, lessee, lessor, general partnership, or corporation) and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities that, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in a racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or may benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated. The transfer of a racing animal to avoid application of a commission rule or ruling is prohibited and constitutes grounds for discipline.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.17(99D) Owners of racing animals.

6.17(1) Each greyhound owner must obtain an owner's license from the commission to enter an animal in an official schooling race or a purse race at an Iowa racetrack.

6.17(2) Each owner is subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by a facility or upon making entry to run on its track. Owners shall accept the decision of the commission representative on any and all questions, subject to the owner's right of appeal to the commission.

6.17(3) An owner who is under the age of 18 must have a parent or guardian cosign any contractual agreements.

6.17(4) No person or entity that is not the owner of record of a properly registered racing animal that is in the care of a licensed trainer may be licensed as an owner.

6.17(5) Temporary horse owner license. Rescinded IAB 11/5/08, effective 12/10/08.
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.18(99D) Kennel/stable name.

6.18(1) Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission. All kennel/stable names must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

6.18(2) A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner's legal name (first and last name), the owner's full name followed by the word "kennel" or "stable," or a licensed partnership or corporation.

6.18(3) In applying to race under a kennel/stable name, the applicant must disclose the identities behind the name and, if applicable, comply with partnership and corporation rules. The application form must appoint one person to act as the agent for the kennel/stable name.

6.18(4) Changes in identities involved in a kennel/stable name must be reported immediately to and approved by the commission representative.

6.18(5) A licensed owner who has registered under a kennel/stable name may at any time cancel the kennel/stable name after giving written notice to the commission.

6.18(6) A kennel/stable name may be changed by registering a new name.

6.18(7) A licensed owner may not register a kennel/stable name that the commission determines to be either misleading to the public or unbecoming to the sport.

6.18(8) Neither sole owners nor partners, after adopting use of a kennel/stable name, may use their real names to reflect ownership that is reflected in the kennel/stable name.

6.18(9) A fee set by the commission shall be assessed for each application for a kennel/stable name license.

6.18(10) No person may register with any racing authority a stable name which has already been registered by another person, or which is the real name of another owner of race horses, or which is the real or stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name.

6.18(11) Contract kennels must be licensed with the commission, on forms furnished by the commission, in the name of the kennel booking contract entered into between the contract kennel and the facility; this name shall be listed in the official program as “kennel.”

6.18(12) A licensed kennel owner shall not be a party to more than one kennel name at the same facility.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.19(99D) Leases (horse racing only).

6.19(1) No licensee shall lease a racing animal for the purpose of racing at facilities in this state without prior approval of the commission representatives.

6.19(2) Both lessor and lessee must be licensed as owners.

6.19(3) Each licensee who leases a racing animal must submit a copy of that lease to the commission representatives. The lease must contain the conditions of the lease arrangement and the names of all parties and racing animals related to the lease. Failure to submit accurate and complete information under this rule is a violation of these rules.

6.19(4) Both seller and purchaser, or their agents or representatives, of a racing animal that is sold after being registered for racing with a racing association shall immediately notify the commission representatives of the sale and transfer. The commission representatives may require a declaration of the facts of the sale and transfer under oath and penalty of perjury.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.20(99D) Partnerships owning racing animals.

6.20(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding spouses, must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

6.20(2) The managing partner(s) listed on the application and all parties owning 5 percent or more must be licensed as individual owners.

a. The commission representative may request a partnership to have on file with the commission an agreement whereby the managing partner(s) is designated to be responsible for each racing animal. This agreement must be notarized and must be signed by all partners. A copy of this agreement must be attached to the registration certificate on file in the racing secretary's office.

b. It will be the responsibility of the managing partner(s) to make sure that all parties are eligible for licensure. The commission representative shall deny, suspend, or revoke the license of any partnership in which a member (either qualified or limited by rights or interests held, or controlled by any individual or entity) would be ineligible to be licensed as an owner or to participate in racing.

c. Any owner who is a member of a partnership may be required to list all racing animals that the owner intends to race in Iowa in which an interest is owned (either in whole or in part).

d. All parties to a partnership shall be jointly and severally liable for all stakes, forfeits, and other obligations.

e. An authorized agent may be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, entries, scratches, signing of claim slips, and other obligations in lieu of the managing partner(s).

6.20(3) A partnership name under which a racing animal races shall be considered a kennel/stable name for purposes of these rules. It will not be necessary for the partnership to obtain a kennel/stable name license.

6.20(4) Any partner's share or partial share of a partnership that owns a racing animal shall not be assigned without the written consent of the other partner(s), the commission representative's approval, and filing with the racing secretary. Any alteration in a partnership structure or percentages must be reported promptly in writing, notarized, signed by all members of the partnership, and filed with the commission.

6.20(5) The commission representative may review the ownership of each racing animal entered to race and shall ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owner(s). The commission representative may determine the validity for racing purposes of all liens, transfers and agreements pertaining to ownership of a racing animal and may call for adequate evidence of ownership at any time. The commission representative may declare any animal ineligible to race if its ownership, or control of its ownership, is in question.

6.20(6) A fee set by the commission shall be assessed for each application for a partnership license. [ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 2927C, IAB 2/1/17, effective 3/8/17]

491—6.21(99D) Corporations owning racing animals.

6.21(1) All corporations must be duly licensed by the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D). In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

6.21(2) The corporation stockholders owning less than 5 percent of the stock of a corporation need not be licensed; however, the commission may request a list of these stockholders. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. These stockholders shall not have access to the backstretch, to the paddock area, or to the winner's circle other than as guests of a facility, commission representatives, or designated licensees and may be required to submit additional information as requested by the commission representative, which may include a release for confidential information and submission of fingerprint cards; and the commission may assess costs, as required, for criminal history checks. This information shall be supplied to the commission representative within 30 days of the date of the request.

6.21(3) Any and all changes in either the corporation structure or the respective interest of stockholders as described above must be notarized and promptly filed with the commission representatives.

6.21(4) The corporate name under which the corporation does business in Iowa shall be considered a kennel/stable name for purposes of these rules. It shall not be necessary for the corporation to obtain a kennel/stable name license.

6.21(5) A corporation, in lieu of an executive officer, may appoint a racing manager or an authorized agent for the purposes of entry, scratches and the signing of claim slips, among other obligations.

6.21(6) The commission representative may deny, suspend, or revoke the license of a corporation for which a beneficial interest includes or involves any person or entity that is ineligible (through character, moral fitness or any other criteria employed by the commission) to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

6.21(7) Any stockholder holding a beneficial interest of 5 percent or more of a corporation must, in addition to being licensed, list any interest owned in all racing animals in which any beneficial interest is owned.

6.21(8) The corporation must pay a prescribed fee to the commission.
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.22(99D) Authorized agents for owner entities of racing animals.

6.22(1) Any persons represented by a kennel name, stable name, corporation, partnership, or single person entity may assign an agent for the kennel name, stable name, corporation, partnership, or single person entity. The assigned agent is then authorized to handle matters pertaining to racing, which may include authorization to collect all purses or other moneys.

6.22(2) The application for a license as an authorized agent must be signed by the principal and clearly set forth the powers of the agent, including whether the agent is empowered to collect money from the facility. The application must be notarized and a copy must be filed with the facility.

6.22(3) Changes in an agent's powers or revocation of an agent's authority must be in writing, notarized, and filed with the commission's licensing office and the facility.

6.22(4) The authorized agent must pay a prescribed fee to the commission.
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.23(99D) Trainers and assistant trainers of racing animals.

6.23(1) All trainers and assistant trainers of racing animals and their employees are subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by the facility or upon making entry to run on its track. Trainers, assistant trainers, and their employees shall accept the decision of the commission representative on any and all questions, subject to their right of appeal to the commission.

6.23(2) Licensing of trainers and assistant trainers. Eligibility:

a. An applicant must be at least 18 years of age to be licensed by the commission as a trainer or assistant trainer.

b. An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or more of the following:

(1) A written examination.

(2) An interview or oral examination.

(3) A demonstration of practical skills in a "barn test" (horse racing only).

c. An applicant must have a racing animal eligible to race and registered to race at the current race meeting.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.24(99D) Jockeys and apprentice jockeys.

6.24(1) *Eligibility.*

a. An applicant for a jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have the written consent of a parent or guardian.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability, or temporary participation in races. An applicant may participate in a race or races, with the commission representative's prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

6.24(2) Apprentice jockeys.

a. The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing does not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An applicant for an apprentice jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have written consent of parent or guardian. Before such license is granted, the gaming representative shall ascertain that the applicant has suitable qualifications and aptitude to hold an apprentice jockey's license and that the applicant has not been previously licensed as a jockey under any jurisdiction.

d. Rescinded IAB 1/30/08, effective 3/5/08.

6.24(3) Jockeys from foreign countries. Upon making application for a license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their countries, not under suspension, and bound by the rules and laws of this state. To facilitate this process, the jockey shall present a declaration sheet to the commission representative in a language recognized in this jurisdiction. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.25(99D) Jockey agent.

6.25(1) An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission; and

b. Be qualified, as determined by the commission representative, by reason of experience, background, and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(1) A written examination.

(2) An interview or oral examination.

c. An applicant not previously licensed as a jockey agent shall be required to pass a written and oral examination.

6.25(2) A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.26(99D) Driver. In determining eligibility for a driver's license, the board shall consider:

1. Whether the applicant has obtained the required U.S.T.A. license.

2. Evidence of driving experience and ability to drive in a race.

3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver. However, a person under 18 years of age, but at least 16 years of age who has the written consent of a parent or guardian, may be licensed to drive in qualifying races only.

4. Evidence of physical and mental ability.

5. Results of a written examination to determine qualifications to drive and knowledge of commission rules.

6. Record of rule violations.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.27(99D) Practicing veterinarians. Every veterinarian practicing on facility premises must have an unrestricted and current license to practice veterinary science issued by the state of Iowa veterinary regulatory authority and shall be licensed by the commission in accordance with the commission rules governing occupational licensing.

6.27(1) Every veterinarian seeking to be licensed by the commission shall submit verification of a current and unrestricted license to practice veterinary science issued by the state of Iowa veterinary regulatory authority.

6.27(2) A veterinarian seeking to be licensed by the commission shall disclose in the veterinarian's application to the commission all disciplinary action taken against any licenses to practice veterinary science held by the applicant.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.28(99D,99F) Alcohol and drug testing.

6.28(1) *Alcohol prohibition/preliminary breath test.* Licensees whose duties require them to be in a restricted area of a racing facility shall not have present within their systems an amount of alcohol of 0.05 percent or more. A restricted area is a designated area for sample collection, paddock, racetrack, or other area where racing officials carry out the duties of their positions.

Acting with reasonable cause, a commission representative may direct the above licensees to submit to a preliminary breath test. A licensee shall, when so directed, submit to examination.

If the results show a reading of 0.05 percent alcohol content or more, the licensee shall not be permitted to continue duties for that day. For a second violation, the licensee shall not be permitted to continue duties for that day and then shall be subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

If the results show a reading of 0.10 percent alcohol content or more, the licensee is subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

6.28(2) *Drug prohibition/body fluid test.* Licensees whose duties require them to be in a restricted area, as defined in subrule 6.28(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.
2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.
3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

6.28(3) *Procedures following positive chemical analysis.*

a. After professional evaluation, if the licensee's condition proves nonaddictive and not detrimental to the best interest of racing, and the licensee can produce a negative test result and agrees to further testing at the discretion of the commission representative to ensure unimpaired, the licensee may be allowed to participate in racing.

b. After professional evaluation, should the licensee's condition prove addictive or detrimental to the best interest of racing, the licensee shall not be allowed to participate in racing until the licensee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the commission. The licensee must also agree to further testing at the discretion of the commission representative to ensure unimpairment.

c. For a second violation, a licensee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.29(99D) Time by which owner, jockey and trainer must be licensed. The owner (includes stable names, partnerships, and corporations), the jockey and the trainer of a horse entered to race must be licensed by the first post time of the race card for the day in which the horse is entered.

[ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 2468C, IAB 3/30/16, effective 5/4/16]

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CHAPTER 7 GREYHOUND RACING

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—7.1(99D) Terms defined. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Bertillion card” means a card that lists the identifying features of a greyhound.

“Bolt” means when a greyhound leaves the race course during the running of an official race.

“Commission” means the racing and gaming commission.

“Dead heat” means when two or more greyhounds reach the finish line of a race at the same time.

“Double entry” means entry of two or more greyhounds in the same race from the same kennel or same owner that are separate wagering interests.

“Draw” means the process of selecting runners and the process of assigning post positions in a manner to ensure compliance with the conditions of the rules of racing.

“Entrance fee” means a fee set by the facility that must be paid in order to make a greyhound eligible for a stakes race.

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“Facility premises” means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, kennel area, parking lots, and any other areas under the jurisdiction of the commission.

“Foreign substance” means any drug, medicine, or any other substance uncommon to the greyhound’s body which can or may affect the racing condition of a greyhound or which can or may affect sampling or testing procedures.

“Forfeit” means money due but lost because of an error, fault, neglect of duty, breach of contract, or a penalty.

“Greyhound” means a greyhound registered with the National Greyhound Association.

“Licensee” means a person that has been issued a current license to participate in racing in Iowa.

“Lock-out kennel” means the secure and restricted area within the paddock used to temporarily house entered greyhounds prior to their participation in the current performance.

“NGA” means the National Greyhound Association.

“No Race” means a race canceled for any reason by the stewards.

“Owner” means any person or entity that holds any title, right of interest, whole or partial, in a greyhound, including the lessee and lessor of a greyhound.

“Post position” means the position assigned to a greyhound for the start of the race.

“Post time” means the scheduled starting time for a contest.

“Rule off” means the act of barring a greyhound from the premises of a facility and denying all racing privileges.

“Scratch” means the act of withdrawing an entered greyhound from a race after the program is printed.

“Tote/totalizator” means the machines that sell mutuel tickets and the board on which the approximate odds are posted.

491—7.2(99D) Facility’s responsibilities.

7.2(1) Racetrack. Each facility shall provide a race course which:

- a. Is constructed and elevated in a manner that is safe and humane for greyhounds.
- b. Has a surface, including cushion subsurface and base, constructed of materials and to a depth that adequately provides for the safety of the greyhounds.
- c. Has a drainage system that is approved by the commission.
- d. Must be approved by the commission and be subject to periodic inspections by the stewards.

7.2(2) Equipment. Each facility shall install, maintain in good working condition, and provide for qualified personnel to operate the following equipment:

a. Equipment necessary to produce adequate video recordings of the prerace blanket and muzzle inspection and the entire race from start to finish. Video recordings shall be retained and secured by the facility until the first day of the following racing season.

b. Communications systems between the stewards, mutuel department, starting box, public address announcer, paddock, and necessary on-track racing officials.

c. A starting box and mechanical lure approved by the commission.

7.2(3) Vacancies.

a. When a vacancy occurs among the racing officials other than the stewards prior to post time of the first race of the day, or when a vacancy occurs after the racing of the day has started, the facility shall immediately fill the vacancy, subject to approval by the board of stewards. Permanent changes of racing officials during the racing meet shall be requested in writing by the facility subject to the written approval of the administrator or commission representative before the change occurs.

b. If none of the stewards are present prior to post time of the first race of the day, the management of the facility shall name at least three qualified persons to serve during the absence of the stewards and immediately file a full written report of the absence and the names of the replacements to the commission.

7.2(4) Other responsibilities.

a. The facility shall provide an area located within a reasonable proximity of the paddock for the purpose of collecting body fluid samples for any tests required by the commission. The location, arrangement, and furnishings, including refrigeration and hot and cold running water, must be approved by the commission.

b. The facility shall take such measures needed to maintain the security of the greyhounds while on facility premises to protect them from injury, vexing, or tampering.

c. The facility shall exclude all persons from the kennel compound area who have no designated duty or authority with the greyhounds in the compound area and are not representatives of the commission, racing officials, duly authorized licensed employees, or guests with facility-approved passes.

d. The facility shall periodically, or whenever the stewards deem necessary, remove soiled surface materials from runs, the detention area for collection of samples, and exercise areas and replace with clean surface materials.

491—7.3(99D) Racing officials—duties.

7.3(1) Racing officials—general.

a. The officials of a race meeting shall include: the stewards; commission veterinarian; commission veterinary assistants; director of racing; mutuel manager; racing secretary; assistant racing secretary; chart writer; paddock judge; clerk of scales; lure operator; brakeman; photo finish operator/timer; starter; patrol judge; and kennel master.

b. All racing officials, except the state stewards, commission veterinarian and commission veterinary assistants, shall be appointed by the facility. Appointments by the facility are subject to the approval of the commission or commission representative. The commission or commission representative may demand a change of personnel for what the commission deems good and sufficient reason. The appointment of a successor to racing officials shall be subject to the approval of the administrator or commission representative.

c. Racing officials are prohibited from the following activities:

(1) Having any interest in the sale, lease, purchase, or ownership of any greyhound racing at the meeting, or its sire or dam.

(2) Wagering on the outcome of a race at the facility where they are employed.

(3) Owning a business or being employed by a business that does business with the facility.

(4) Accepting or receiving money or anything of value for assistance in connection with the racing official's duties.

7.3(2) Stewards.

a. There shall be three stewards for each racing meet, two of whom shall be appointed by the commission and one who shall be nominated by the facility for approval by the commission or commission representative.

b. The laws of Iowa and the rules of the commission supersede the conditions of a race. In matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility.

c. The stewards shall have the authority to interpret the rules and to decide all questions not specifically covered by the rules.

d. All questions pertaining to the extent of the stewards' authority shall be determined by a majority of the stewards.

e. The stewards shall have the authority to regulate owners, trainers, kennel helpers, all other persons attendant to greyhounds, racing officials, and licensed personnel of the racing meet and those persons addressed by 491—paragraph 4.6(5) "e."

f. The stewards shall have the authority to determine all questions arising with reference to entries and racing.

g. The stewards shall have the authority to call for proof that a greyhound is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the greyhound disqualified.

h. The stewards shall have the authority to order at any time an examination of any greyhound entered for a race or which has run in a race.

i. The stewards shall take notice of any questionable conduct, with or without complaint, and shall investigate promptly and render a decision on every objection and on every complaint made to them.

j. The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in greyhound racing as a sport, shall have the right to authorize a person(s) on their behalf to enter into or upon the buildings, kennels, rooms, motor vehicles, trailers, or other places within the premises of a facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

k. The steward(s) present shall appoint one or two persons to serve as temporary stewards if a vacancy or vacancies occur among the stewards.

l. The stewards may excuse a greyhound, after it has left the paddock for the post, if they consider the greyhound injured, disabled, or unfit to run. All money on the greyhound shall be refunded.

m. The stewards shall determine the finish of a race by the relative position of the muzzle, or nose if the muzzle is lost or hanging, of each greyhound. They shall immediately notify the mutuel department of the numbers of the first three (four in races with superfecta wagering) greyhounds.

(1) The stewards shall promptly display the numbers of the first three (four in races with superfecta wagering) greyhounds in each race in order of their finishes. If the stewards differ in their placing, the majority shall prevail.

(2) The stewards may consult a picture from the photo finish camera whenever they consider it advisable; however, in all cases, the camera is merely an aid and the decision of the stewards shall be final.

(3) The stewards may post, without waiting for a picture, such placements as are in their opinion unquestionable and, after consulting the picture, make other placements. However, in no case shall the race be declared official until the stewards have determined the greyhounds finishing first, second and third (and fourth in races with superfecta wagering).

(4) The stewards may correct an error before the display of the sign "Official" or recall the sign "Official" in case it has been displayed through error.

n. The stewards may place any greyhound on the schooling list at any time for any reason that, in their opinion, warrants such action.

7.3(3) Commission veterinarian and veterinary assistants.

a. The commission veterinarian shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarian shall be on the premises of the facility at weigh-in time and during all racing hours. The veterinarian shall examine the physical condition of each greyhound at weigh-in time, observe each greyhound as it enters the lock-out kennel, and reexamine the greyhound when the greyhound enters the paddock prior to the race, and recommend to the stewards that any greyhound deemed unsafe to race or physically unfit to produce a satisfactory effort in a race be scratched.

c. The commission veterinarian shall place any greyhound determined to be sick or have a communicable disease, or any greyhound deemed unsafe, unsound, or unfit, on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers, and racing officials. Once a greyhound has been placed on the veterinarian's list, it must remain on the list for at least three calendar days and may be allowed to race only after it has been removed from the list by the commission veterinarian.

d. The commission veterinarian shall have full access to each and every kennel where greyhounds are kenneled on the facility premises. The commission veterinarian shall inspect the general physical condition of the greyhounds, sanitary conditions of the kennels, segregation of female greyhounds in season, segregation of sick greyhounds, the types of medicine found in use, incidents of cruel and inhumane treatment, and any other matters or conditions which are brought to the attention of the commission veterinarian.

e. The commission veterinarian shall have supervision and control of the detention area for collection of body fluid samples for the testing of greyhounds for prohibited medication.

f. The commission veterinarian shall not be licensed to participate in racing in any other capacity. A commission veterinarian may not prescribe any medication for, or treat, any greyhound owned by a person licensed by the commission, on or away from any facility, with or without compensation, except in the case of an emergency; this provision does not apply to a relief veterinarian appointed by the administrator to cover the absence of the commission veterinarian. When emergency treatment is given, a commission veterinarian shall make a complete written report to the stewards. Euthanasia of greyhounds shall not be considered treatment.

g. The commission veterinarian shall conduct a postmortem examination on every greyhound to determine the injury or sickness which resulted in the euthanasia or death if:

- (1) A greyhound suffers a breakdown on the racetrack.
- (2) A greyhound expires while kenneled on facility premises.

h. Commission veterinary assistant. The commission veterinarian may employ persons to assist in maintaining the detention area and collecting body fluid samples.

7.3(4) Director of racing.

a. The director of racing shall have full supervision over kennel owners, greyhound owners, trainers, kennel helpers, lead-outs, and all facility racing officials.

b. The director of racing shall ensure that all racing department personnel are properly trained in the discharge of their duties.

7.3(5) Mutuel manager. The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on a delay when requested by a state steward.

7.3(6) Racing secretary and assistant racing secretary.

a. The racing secretary shall discharge all duties whether expressed or required by the rules and shall keep a complete record of all races.

b. The racing secretary is responsible for maintaining a file of the NGA certificate, Iowa Greyhound Park lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on facility property. Disclosure is made for

the benefit of the public, and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

c. The racing secretary shall ensure that current valid vaccination certificates for diseases, as determined by the commission veterinarian, are submitted for greyhounds housed within facility property. The racing secretary shall also maintain records of vaccinations in such a manner as to notify the stewards, the commission veterinarian, and the trainer of impending expiration ten days prior to the actual date of expiration.

d. The racing secretary shall receive and enter all entries and withdrawals as set forth in this chapter. Conditions of races shall not conflict with commission rules and the racing secretary shall, each day, as soon as the entries have closed and been compiled and the withdrawals have been made, post in a conspicuous place an overnight listing of the greyhounds in each race. The racing secretary shall make every effort to ensure fairness and equal opportunity for all greyhound owners and kennel owners in the drawing of all races.

e. The racing secretary shall not allow any greyhound to start in a race unless the greyhound is entered in the name of the legal owner and the owner's name appears on the registration papers, a legal lease, or bill of sale attached to the registration papers.

f. The racing secretary shall not allow any greyhound to start in a race if it is in any way ineligible or disqualified.

g. Assistant racing secretary. The facility may employ an assistant racing secretary who shall assist the racing secretary in the performance of duties and serve under the supervision of the racing secretary.

7.3(7) Chart writer.

a. The chart writer shall compile the information necessary for a program that shall be printed for each racing day. The program shall contain the names of the greyhounds that are to run in each of the races for that day. These names shall appear in the order of their post positions designated by numerals placed at the left.

b. The program or form sheet must carry at least two past performances of each greyhound scheduled to race. The program or form sheet must also contain name; color; sex; date of whelping; breeding; established racing weight; number of starts in official races; number of times finishing first, second and third; name of owner or lessee (if applicable); name of trainer; distance of race; track record; and other information to enable the public to properly judge the greyhound's ability.

c. If a greyhound's name is changed, the new name, together with the former name, shall be published in the official entries and program until after the greyhound has started six times.

7.3(8) Paddock judge.

a. The paddock judge shall complete a Bertillion card for each greyhound prior to entering official schooling or an official race, by a physical inspection of each greyhound and comparison with NGA ownership papers. Inconsistencies between the physical inspection and NGA papers shall be noted on the Bertillion card, and significant inconsistencies shall be reported to the stewards.

b. The paddock judge shall fully identify and check, using the Bertillion card index system of identification maintained by the facility, all greyhounds starting in schooling and official races while in the paddock before post time. No greyhound shall be permitted to start in an official schooling race or official race that has not been fully identified and checked against the Bertillion card. The paddock judge shall report to the stewards any greyhound(s) that does not conform to the card index identification.

c. The paddock judge shall provide to the stewards, at the beginning of each race meeting and during the meeting if requested by the stewards due to inaccuracies or exceptional circumstances, written certification of the accuracy of the official scale used for weighing greyhounds.

d. The paddock judge shall supervise the kennel master and lead-outs in the performance of their duties.

e. The paddock judge shall not allow any greyhound to be weighed in unless it has an identification tag attached to its collar indicating the number of the race in which the greyhound is entered and its post position. This tag shall not be removed until the greyhound has been weighed out and blanketed.

f. The paddock judge shall not allow anyone to weigh in a greyhound for racing unless the person has a valid kennel owner's, trainer's, or assistant trainer's license issued by the commission.

g. The paddock judge shall not allow any greyhound to leave the paddock for the starting box unless it is equipped with a regulation muzzle and blanket. The blanket worn by each greyhound shall prominently display the numeral corresponding to the greyhound's assigned post position. The muzzles and blankets used shall be approved by the paddock judge, who shall carefully examine them in the paddock before the greyhound leaves for the post to ensure they are properly fitted and secured.

h. The paddock judge shall keep on hand and ready for use extra muzzles of all sizes, lead straps, and collars.

i. The paddock judge shall assign post positions to lead-outs by lot and maintain a record of all such assignments.

j. The paddock judge shall report all delays and weight violations to the stewards.

7.3(9) Clerk of scales.

a. The clerk of scales shall weigh all greyhounds in and out in a uniform manner and observe the weight display and scale platform when reading the weight.

b. The clerk of scales shall post a scale sheet of weights in a conspicuous location promptly after weighing.

c. The clerk of scales shall prevent a greyhound from passing the scales if there should be a weight variation as set forth in subrules 7.9(4), 7.9(5), and 7.9(6). The clerk of scales shall promptly notify the paddock judge of the weight variation, who will report to the stewards any infraction of the rules as to weight or weighing.

d. The clerk of scales shall report all late scratches and weights for display on the tote board or on a bulletin board located in a place conspicuous to the wagering public.

e. The clerk of scales shall ensure that all greyhounds are weighed in and weighed out with a muzzle, collar, and lead strap.

f. The clerk of scales shall keep a list of all greyhounds known by the racing officials to be consistent weight losers while in the lock-out kennel and shall notify the stewards as to the weight loss of any such greyhound before each race.

7.3(10) Lure operator.

a. The lure operator shall operate the lure in a smooth, uniform, and consistent manner so as not to impede or otherwise disrupt the running of the race.

b. The lure operator shall ensure that the distance between the lure and lead greyhound is consistent with the distance prescribed by the stewards.

c. The lure operator shall take into consideration the location on the course and the prevailing weather conditions to maintain the appropriate distance of the lure from the lead greyhound.

d. The lure operator shall be held accountable by the stewards for the lure's operation.

e. The lure operator shall determine that the lure is in good operating condition and shall immediately report to the stewards any circumstance that may prevent the normal, consistent operation of the lure.

7.3(11) Brakeman.

a. Prior to the running of each race, the brakeman shall:

(1) Ensure that the brake system is in good operating condition, which includes properly unlocking the brake.

(2) Inspect the lure motor for any noticeable malfunctions.

(3) Ensure that the lure is secured and the arm is fully extended into a stable and locked position.

(4) Inspect the rail to ensure that it is in perfect repair and free of debris.

b. The brakeman shall ensure that the arm has retracted and stop the lure in a safe and consistent manner after each race is finished.

7.3(12) Photo finish operator/timer.

a. The photo finish operator/timer shall maintain the photo finish and timing equipment in proper working order and shall photograph each race.

b. The photo finish operator/timer shall be responsible for and declare the official time of each race. The time of the race shall be taken from the opening of the doors of the starting box.

c. The timer shall use the time shown on the timing device as the official time of the race if the timer is satisfied that the timing device is functioning properly; otherwise, the timer shall use the time recorded manually with a stopwatch.

7.3(13) Starter.

a. The starter shall give orders and take measures not in conflict with commission rules necessary to secure a fair start. There shall be no start until, and no recall after, the doors of the starting box have opened except under subrules 7.12(10) and 7.12(11).

b. The starter shall report causes of delay to the stewards.

7.3(14) Patrol judge.

a. The patrol judge shall supervise the lead-outs and greyhounds from paddock to post.

b. The patrol judge, in view of the stewards and the public, shall inspect the muzzles and blankets of greyhounds to ensure muzzles and blankets are properly fitted and secured after the greyhounds have left the paddock.

c. The patrol judge shall assist the starter in the starter's duties upon the arrival of the lead-outs and greyhounds at the starting box.

7.3(15) Kennel master.

a. The kennel master shall unlock the prerace lock-out kennels immediately before weigh-in to inspect that the lock-out kennels are in proper working order and that nothing has been deposited in any of the lock-out crates.

b. The kennel master or designee must receive the greyhounds from the trainer, one at a time, and ensure that each greyhound is placed in its lock-out crate and continue to ensure the security of the lock-out area from weigh-in until the time when greyhounds are removed for the last race of a performance.

c. The kennel master shall, on a daily basis, ensure that the lock-out kennels are sprayed, disinfected, maintained in proper sanitary condition, and at an appropriate temperature and climate.

[ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—7.4(99D) Lead-outs.

7.4(1) A lead-out shall lead the greyhounds from the paddock to the starting box. Owners, trainers, or attendants will not be allowed to lead their own greyhounds.

7.4(2) Each lead-out will lead only one greyhound from the paddock to the starting box during official races. In official schooling races, no more than two greyhounds may be led from the paddock to the starting box by one lead-out.

7.4(3) Lead-outs must handle the greyhounds in a humane manner, put the assigned greyhound in its proper box before the race, and then retire to their designated post during the running of the race.

7.4(4) Lead-outs are prohibited from holding any conversation with the public or with one another en route to the starting box or while returning to the paddock.

7.4(5) Lead-outs shall be attired in clean uniforms, present a neat appearance, and conduct themselves in an orderly manner.

7.4(6) Lead-outs are prohibited from smoking, drinking beverages other than water, or eating unless on duly authorized breaks in a designated area.

7.4(7) Lead-outs shall not be permitted to have any interest in the greyhounds racing at the facility where they are assigned.

7.4(8) Lead-outs are prohibited from wagering on the result of any greyhound racing at the facility where they are assigned.

7.4(9) Lead-outs shall immediately report any infirmities or physical problems they observe in greyhounds under their care to the nearest racing official for communication to the commission veterinarian.

7.4(10) Lead-outs shall not remove racing blankets until the greyhounds are accepted by licensed kennel representatives at the conclusion of the race.

7.4(11) Lead-outs may assist the kennel master in the performance of the kennel master's duties.

491—7.5(99D) Trainers and assistant trainers.

7.5(1) A trainer shall prevent the administration of any drug, medication, or other prohibited substance that may cause a violation of commission rules. The trainer is responsible for the condition of a greyhound entered in an official race and, in the absence of substantial evidence to the contrary, is responsible for the presence of any prohibited drug, medication, or other substance, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

7.5(2) Other responsibilities. A trainer is responsible for:

a. Ensuring that the kennel and primary enclosures are cleaned and sanitized as may be necessary to reduce disease hazards and odors. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials.

b. Ensuring that fire prevention rules are strictly observed in the assigned area.

c. Providing a list to the state steward(s) of the trainer's employees in any area under the jurisdiction of the commission. The list shall include each employee's name, occupation, social security number, and occupational license number. The commission shall be notified by the trainer, in writing, within 24 hours of any change.

d. Ensuring the proper identity, custody, care, health, condition, and safety of greyhounds in the trainer's charge.

e. Disclosure to the racing secretary of the true and entire ownership of each greyhound in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a greyhound, shall be attached to the registration certificate for the greyhound and filed with the racing secretary.

f. Ensuring that greyhounds under the trainer's care have a completed Bertillion card on file with the paddock judge prior to being entered for official schooling or official races.

g. Ensuring that greyhounds under the trainer's care have not been trained using a live lure or live bait.

h. Using the services of those veterinarians licensed by the commission to attend greyhounds that are kenneled on facility premises. If necessary to remove a greyhound from facility premises for veterinary services, the trainer must provide, upon request, the records required in 7.14(4) "c."

i. Promptly reporting to the stewards and the commission veterinarian the serious illness of any greyhound in the trainer's charge.

j. Promptly reporting the death of any greyhound in the trainer's care on facility premises to the stewards, owner, and the commission veterinarian and complying with the rules on postmortem examination set forth in paragraph 7.3(3) "g."

k. Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a greyhound in the trainer's custody, care, or control has received any prohibited drugs or medication.

l. Having the trainer's greyhound at weigh-in promptly at the time appointed. If not, the greyhound may be scratched and the trainer may be subject to disciplinary action.

m. When a trainer is to be absent 24 hours or more from the kennel or premises where greyhounds are racing, the trainer shall provide a licensed trainer or assistant trainer to assume complete responsibility for all greyhounds under the trainer's care, and both shall sign a "trainer's responsibility form" which must be approved by the stewards.

7.5(3) Assistant trainers.

a. Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards.

b. An assistant trainer may substitute for and shall assume the same duties, responsibilities, and restrictions as imposed on the licensed trainer. The trainer shall be jointly responsible for the assistant trainer's compliance with commission rules.

491—7.6(99D) Registration.

7.6(1) No greyhound shall be entered or permitted to race or to be schooled at any facility unless properly tattooed and registered by the NGA and, if applicable, its last four past-performance lines are made available to the racing secretary. The NGA shall be recognized as the official breeding registry of all greyhounds.

7.6(2) A certificate of registration for each greyhound shall be filed with the racing secretary at the racetrack where the greyhound is to be schooled, entered, or raced. All certificates of registration must be available at all times for inspection by the stewards.

7.6(3) All transfers of any title to a leasehold or other interest in greyhounds schooled, entered, or raced at any facility shall be registered and recorded with the NGA.

7.6(4) No title or other interest in any greyhound will be recognized by the commission until the title or other interest is evidenced by written instrument duly filed with and recorded by the NGA. Certified copies of the written instrument shall be filed with the racing secretary at the facility where the greyhound is to be schooled, entered, or raced, and, upon request, with the commission. When a greyhound is leased, the lessee of the greyhound shall file a copy of the lease agreement with the racing secretary and, upon request, with the commission. The lease agreement shall include:

- a. The name of the greyhound.
- b. The name and address of the owner.
- c. The name and address of the lessee.
- d. The kennel name, if any, of each party.
- e. The terms of the lease.

7.6(5) Whenever a greyhound, or any interest in a greyhound, is sold or transferred, a copy of the NGA transfer of ownership documents must be filed with the racing secretary, who must forward it to the commission upon request.

7.6(6) When a greyhound is sold with engagements, or any part of them, the written acknowledgment of both parties that the greyhound was sold with the engagements is necessary to entitle the seller or buyer to any rights or obligations set forth in the transaction. If certain engagements are specified, only those are sold with the greyhound. When the greyhound is sold by public auction, the advertised conditions of the sale are sufficient evidence and, if certain engagements are specified, only those are sold with the greyhound.

7.6(7) Vaccination certificates.

a. All NGA certificates must be accompanied by a current valid vaccination certificate for rabies and other diseases as determined by the commission veterinarian and administrator. This certificate must indicate vaccination by a duly licensed veterinarian against such diseases. The criteria for vaccination will be disclosed seven days before the opening of each racing season and will be subject to continuing review. The criteria may be revised at any time and in any manner deemed appropriate by the commission veterinarian and the administrator.

b. Upon expiration of a vaccination certificate, the greyhound must be removed from the premises immediately.

491—7.7(99D) Entries.

7.7(1) Persons entering greyhounds to run at a facility agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

7.7(2) Every entry for a race must be in the name of the registered owner, lessee, or a kennel name and may be made in person, in writing, by telephone, or by fax. The full name of every person having an ownership in a greyhound, accepting the trainer's percentage, or having any interest in its winnings must be registered with the racing secretary before the greyhound starts at any meeting.

7.7(3) A greyhound shall not be qualified to run in any race unless it has been, and continues to be, duly entered for the same. A greyhound eligible at the time of entry shall continue to be qualified unless the conditions of a race specify otherwise or the greyhound is disqualified by violation of commission rules. A greyhound must be eligible at the time of the start to be qualified for an overnight event.

7.7(4) The entrance to a race shall be free unless otherwise stipulated in its conditions. If the conditions require an entrance fee, it must accompany the entry or the greyhound shall be considered ineligible.

- a.* A person entering a greyhound becomes liable for the entrance money or stake.
- b.* A greyhound shall not become a starter for a race unless any stake or entrance money required for that race has been duly paid.
- c.* Entrance money is not refunded on the death or withdrawal of a greyhound, because of a mistake in its entry if the greyhound is ineligible, or the greyhound's failure to start.
- d.* If the racing secretary should allow a greyhound to start in a race without its entrance money or stake having been paid, the facility shall be liable for the entrance money or stake.
- e.* If a race is not run, all stakes or entrance money shall be refunded.
- f.* No entry, or right of entry under it, shall become void upon the death of the person who entered the greyhound.

7.7(5) The entrance money required for a race shall be distributed as provided in the conditions of the race.

7.7(6) Any person having an interest in a greyhound that is less than the interest or property of any other person is not entitled to assume any of the rights or duties of an owner as provided by commission rules, including but not limited to the right of entry and declaration.

7.7(7) Joint subscriptions and entries may be made by any one or more of the owners. However, all partners shall be jointly and severally liable for all fees and forfeits.

7.7(8) The racing officials shall have the right to call on any person in whose name a greyhound is entered to produce proof that the greyhound entered is not the property, either wholly or in part, of any person who is disqualified or to produce proof as to the extent of interest or property a person holds in the greyhound. The greyhound shall be considered ineligible if such proof is not provided.

7.7(9) No greyhound shall be permitted to start that has not been fully identified.

7.7(10) Any person who knowingly attempts to establish the identity of a greyhound or its ownership shall be held accountable the same as the owner and shall be subject to the same penalty in case of fraud or attempted fraud.

7.7(11) No disqualified greyhound shall be allowed to enter or to start in any race. A greyhound will be considered disqualified if the greyhound is:

- a.* Owned in whole or in part or is under the control, directly or indirectly, of a disqualified person.
- b.* Not conditioned by a licensed trainer.
- c.* On the schooling list or the veterinarian's list.
- d.* A female greyhound in season or lactating.
- e.* Disqualified by any other commission rule.

7.7(12) Entries that have closed shall be compiled and conspicuously posted without delay by the racing secretary.

a. Entries for stakes races shall close at the time advertised and no entry shall be accepted after that time.

b. In the absence of notice to the contrary, entrance and withdrawals for stakes races which close during or on the eve of a race meeting shall close at the office of the racing secretary who shall make provisions therefor. Closing for stakes races at all other times shall be at the office of the facility.

7.7(13) No alteration shall be made in any entry after closing of entries, but an error may be corrected.

7.7(14) No trainer or owner shall have more than two greyhounds in any race except in stakes or sweepstakes races. No double entries shall be allowed until all single interests eligible for the performance are used and double entries shall be uncoupled for wagering purposes. Double entries shall be prohibited in all twin trifecta and tri-super races.

7.7(15) No greyhound under the age of 16 months shall be eligible to enter or race.

7.7(16) The facility shall have the right to withdraw or change any unclosed race. In the event the number of entries to any stakes race is in excess of the number of greyhounds that may, because of track limitations, be permitted to start, the starters for the race shall be determined by the racing secretary, in accordance with the conditions of the race.

7.7(17) No greyhound that has been trained using a live lure or live bait shall be entered to race at a facility in the state of Iowa.

7.7(18) The starting post position of greyhounds shall be assigned by lot or drawing supervised by the racing secretary at a time and place properly posted in the paddock, at least one day prior to the running of the races so that any and all owners, trainers, or authorized agents interested may be present if they so desire.

491—7.8(99D) Withdrawals and scratches.

7.8(1) The withdrawal of a greyhound from an engagement is irrevocable.

7.8(2) Withdrawals from sweepstakes shall be made to the racing secretary in the same manner as for making entries. The racing secretary shall record the day and hour of receipt and give early publicity thereto.

7.8(3) Withdrawals from official races must be made by the owner, trainer, or authorized agent to the racing secretary or assistant racing secretary at least one-half hour before the time designated for the drawing of post positions on the day prior to the day on which the greyhound is to race, or at the time the racing secretary may appoint.

7.8(4) Any greyhound that is withdrawn from a race after the overnight entries are closed shall be deemed a scratch. Such a greyhound shall lose all preference accrued up to that date unless excused by the stewards.

a. In order to scratch a greyhound entered in a race, sufficient cause must be given to satisfy the stewards, and the cause must be reported immediately.

b. Any scratches that occur as the result of a violation of a commission rule must carry a penalty, or a suspension of the greyhound for a period of six racing days, or both. Scratches for other causes shall be disciplined at the discretion of the stewards.

c. If any owner or trainer fails to have the greyhound entered at the appointed time for weigh in and as a result the greyhound is scratched, the stewards shall impose a fine, suspension, or both, on the person or persons responsible.

d. The stewards may for sufficient cause scratch a greyhound entered in a race.

7.8(5) All greyhounds scratched from a race because of overweight or underweight shall receive a suspension of six racing days and must school back before starting in an official race. Greyhounds so scratched may school during their suspension.

491—7.9(99D) Weights and weighing.

7.9(1) All greyhounds must be weighed, under supervision of a majority of the stewards, not less than one hour before the time of the first race of the performance, unless prior permission is granted by the state steward.

7.9(2) The weigh-in time shall be limited to a 30-minute period unless an extension has been granted by a state steward.

7.9(3) Before a greyhound is allowed to school or race at any track, the owner or trainer must establish the racing weight of each greyhound with the clerk of scales.

7.9(4) At weigh-in time, should there be a variation of more than one and one-half pounds either way from the greyhound's established weight, the stewards shall order the greyhound scratched.

7.9(5) If, at weigh-in time, there should be more than two pounds of variation between the weight of the greyhound's present race and the weight at weigh-in time of the greyhound's last race, the stewards shall order the greyhound scratched.

7.9(6) At weigh-out time, if a greyhound loses weight in excess of two pounds from its weigh-in weight while in the lock-out kennels, the stewards shall order the greyhound scratched. However, if,

in the opinion of the veterinarian, the loss of weight while in the lock-out kennels does not impair the racing condition of the greyhound, the stewards may allow the greyhound to race.

7.9(7) The weight regulations provided in subrules 7.9(1) through 7.9(6) shall be printed in the daily program.

7.9(8) The established racing weight may be changed upon written request of the kennel owner or trainer and written consent of the stewards, provided the change is made four calendar days before the greyhound is allowed to race at the new weight.

a. All greyhounds having an established weight change of more than one pound must be schooled at least once, or more at the discretion of the stewards, at the new established weight before being eligible for entry.

b. Greyhounds that have not raced or schooled officially for a period of three weeks will be allowed to establish a new racing weight with the consent of the stewards.

7.9(9) The stewards shall have the privilege of weighing a greyhound entered in a race at any period from the time it enters the lock-out kennel until post time.

7.9(10) Immediately after being weighed in, the greyhounds shall be placed in lock-out kennels under the supervision of the paddock judge, and no owner or other person except racing officials, commission representatives, or lead-outs shall be allowed in or near the lock-out kennels.

491—7.10(99D) Qualifying time.

7.10(1) Each facility shall establish and notify the state steward of the qualifying times to be in effect during the racing meet. Said notification must be made at least three days before the first day of official racing.

7.10(2) The qualifying time shall be posted on the notice board at the track.

7.10(3) Any change in the qualifying time during the course of the meeting shall be made only with the approval of the board of stewards.

7.10(4) Any greyhound that fails to meet the established qualifying time shall not be permitted to start other than in futurity or stakes races.

491—7.11(99D) Schooling.

7.11(1) Greyhounds must be schooled in the presence of the stewards, or must, in the opinion of the stewards, be sufficiently experienced before they can be entered or started.

7.11(2) All schooling races shall be at a distance not less than 3/16 mile and wagering will not be allowed.

7.11(3) Any greyhound that has not raced on site for a period of 10 racing days or 15 calendar days, whichever is less, or has been placed on the veterinarian's list shall be officially schooled at least once at its racing weight before being eligible for entry. Any greyhound that has not raced for a period of 30 calendar days shall be officially schooled at its racing weight at least twice before being eligible for entry.

7.11(4) Each official schooling race must consist of at least six greyhounds. However, if this condition creates a hardship, less than six may be schooled with the permission of the state steward.

7.11(5) No hand schooling will be considered official.

7.11(6) All greyhounds in official schooling races must be raced at their established racing weight and started from the box wearing muzzles and blankets.

7.11(7) Any greyhound may be ordered on the schooling list by the stewards at any time for good cause and must be schooled officially and satisfactorily before being allowed to enter an official race.

491—7.12(99D) Running of the race.

7.12(1) When two or more greyhounds run a dead heat, all prizes and moneys to which the greyhounds would have been entitled shall be divided equally between them.

7.12(2) If a greyhound bolts the course, runs in the opposite direction, or does not run the entire prescribed distance for the race, it shall forfeit all rights in the race and, no matter where it finished, the

stewards shall declare the finish of the race the same as if it were not a contender. However, for the purpose of this rule, the greyhound shall be considered to have started the race.

7.12(3) If a greyhound bolts the course, or runs in the opposite direction during the running of the race, and in so doing, in the opinion of the stewards, interfered with any other greyhound in the race, the stewards shall declare a “No Race” and all moneys wagered shall be refunded, except when, in the opinion of the stewards, the interference clearly did not interfere with the outcome of the race.

7.12(4) If it appears that a greyhound may interfere with the running of the race because of failure to leave the box, an accident, or for any other reason, any lead-out or racing official stationed around the track may remove the greyhound from the track. However, for the purpose of this rule, the greyhound shall be considered to have started the race.

7.12(5) All greyhounds must wear the regulation muzzle and blanket while racing.

7.12(6) All greyhounds must be exhibited in the show paddock before post time of the race in which they are entered.

7.12(7) A race shall not be called official unless the lure is in advance of the greyhounds at all times during the race. If at any time during the race a greyhound catches or passes the lure, the stewards shall declare a “No Race” and all moneys wagered shall be refunded.

7.12(8) The stewards shall closely observe the operation of the lure and hold the lure operator to strict accountability for any inconsistency of operation.

7.12(9) If a greyhound is left in the box when the doors of the starting box open at the start, there shall be no refund.

7.12(10) A false start, due to any faulty action of the starting box, break in the machinery, or other cause, is void, and the greyhounds may be started again as soon as practicable, or the race may be declared a “No Race.”

7.12(11) After a greyhound has been placed in the starting box, no refund shall be made and all wagers shall stand. In case of mechanical failure with the starting box, the greyhounds shall be removed from the starting box. The stewards shall determine whether the race will be declared a “No Race” and all moneys wagered be refunded or whether to allow the race to be run after the malfunction has been repaired.

7.12(12) The decision as to whether the greyhound(s) was prevented from starting by a mechanical failure shall be made by the stewards after consultation with the starter.

7.12(13) If a race is marred by jams, spills, or racing circumstances other than accident to the machinery while a race is being run, and three or more greyhounds finish, the stewards shall declare the race finished; but if fewer than three greyhounds finish the stewards shall declare a “No Race” and all moneys wagered shall be refunded.

7.12(14) In the event the lure arm is not fully extended or fails to remain fully extended during the running of the race, the stewards may declare a “No Race” if, in their opinion, the position of the lure arm affected the outcome of the race. In the event the lure arm collapses to the rail during the running of the race, the stewards shall declare a “No Race” and all moneys wagered shall be refunded.

7.12(15) Any act of the owner, trainer, or handler of a greyhound that would tend to prevent the greyhound from running its best and winning if possible shall result in suspension of all persons found guilty of complicity.

491—7.13(99D) Race reckless/interfered/ruled off.

7.13(1) *Race reckless.* It is the steward’s discretion for the first offense on a maiden as to whether the maiden interfered or raced reckless. It will not be mandatory that a first offense on a maiden be raced reckless.

7.13(2) *Interfered.*

a. Maidens or graded greyhounds coming into Iowa with an interference line from another state will be ruled off all Iowa tracks at the time of the first offense in Iowa.

b. Graded greyhounds will be given an interference ticket at the time of their first offense and will be required to school back to stewards’ satisfaction.

c. First offense interference greyhounds will be deleted from the master interference list after one year has elapsed.

7.13(3) Ruled off.

a. For a second interference, a greyhound is ruled off all Iowa tracks.

b. The stewards may rule off a greyhound after the first incident of interference if they determine the greyhound's continued participation in racing jeopardizes the safety of the greyhounds it competes against.

c. Once a greyhound has been ruled off in the state of Iowa, it can not for any reason be entered to race in Iowa again.

491—7.14(99D) Medication and administration, sample collection, chemists, and practicing veterinarians.

7.14(1) Medication and administration.

a. No greyhound, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof.

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph 7.14(1) "a" or "b," in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a greyhound immediately prior to or promptly after running in a race shall be prima facie evidence that the greyhound was administered, with the intent that it would carry or that it did carry, prohibited medication, drug, or foreign substance in its body while running in a race in violation of this rule.

d. No person other than a licensed veterinarian shall administer, cause to be administered, participate, or attempt to participate in any way in the administration to a greyhound registered for racing any medication, drug, or foreign substance prior to a race on the day of the race for which a greyhound is entered.

e. Any such person found to have administered or caused, participated, or attempted to participate in any way in the administration of, a medication, drug, or foreign substance which caused or could have caused a violation of this rule shall be subject to disciplinary action.

f. The owner, trainer, kennel helper, or any other person having charge, custody, or care of the greyhound is obligated to protect the greyhound and guard it against the administration or attempted administration of any medication, drug, or foreign substance. If the stewards find that any person has failed to show proper protection and guarding of the greyhound, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose discipline and take other action they deem proper under any of the rules of the commission.

7.14(2) Sample collection.

a. Under the supervision of the commission veterinarian, urine, blood, and other specimens shall be taken and tested from any greyhounds that the stewards of the meeting, commission veterinarian, or the commission's representatives may designate. The specimens shall be collected by the commission veterinarian or other person(s) the commission may designate.

b. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of greyhounds pending the obtaining of body fluid samples.

c. During the taking of specimens from a greyhound, the owner, trainer, or kennel representative designated by the owner or trainer may be present and witness the taking of the specimen and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or kennel representative of any objections to the source and documentation of the sample.

d. A security guard must be in attendance during the hours designated by the commission.

e. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or the authorized representatives of the commission may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could

affect the racing condition of a greyhound in a race, which may be found in kennels or elsewhere on facility premises or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

f. Nothing in this rule shall be construed to prevent:

(1) Any greyhound in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

7.14(3) *Chemist.*

a. Tests are to be under the supervision of the commission, which shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a foreign substance, medication, drug, or metabolic derivative thereof is present.

b. All body fluid samples taken by or under direction of the commission veterinarian or authorized representative of the commission shall be delivered to the laboratory of the official chemist for analysis. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the greyhound from which the specimen was taken or the identity of its owners, trainer, or kennel shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening for prohibited substances and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the administrator.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of a test suspicious or positive for prohibited substances, the test shall be reconfirmed and the remaining portion of the sample, if available, preserved and protected for one year following close of meet.

f. The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative. In addition to the administrator, the commission chemist shall notify the state steward of all positive tests. In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

g. In reporting to the administrator or state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

h. No action shall be taken by the administrator or state steward on the report of the official chemist unless and until the medication, drug, or other substance and the greyhound from which the sample was taken have been properly identified and until an official report signed by the chemist has been received by the administrator or state steward.

i. The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

7.14(4) *Practicing veterinarian.*

a. Prohibited acts.

(1) A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) No veterinarian shall within the facility premises furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

b. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove it from the facility. The use of other than single-use disposable syringes and infusion tubes on facility premises is prohibited.

c. Every practicing veterinarian licensed by the commission shall keep, on the premises of a facility, a written record of practice relating to greyhounds participating in racing.

(1) This record shall include the name of the greyhound treated, the nature of the greyhound's ailment, the type of treatment prescribed and performed for the greyhound, and the date and time of treatment.

(2) This record shall be kept for practice engaged in at all facilities in the state of Iowa and shall be produced without delay upon the request of the board of stewards or the commission veterinarian.

d. Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

e. Practicing veterinarians may have employees licensed as veterinary assistants working under their direct supervision. Activities of these employees shall not include direct treatment or diagnosis of any animal. The practicing veterinarian must be present if a veterinary assistant is to have access to injection devices or injectables. The practicing veterinarian shall assume all responsibility for a veterinary assistant.

[ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—7.15(99D) Iowa greyhound pari-mutuel racing fund. Pursuant to Iowa Code section 99D.9B, an Iowa greyhound pari-mutuel racing fund (fund) is created in the state treasury and under the control of the commission. The fund will be distributed on an annual basis pursuant to this rule.

7.15(1) Iowa greyhound association.

a. Fifty percent of the money in the fund shall be distributed to the Iowa greyhound association.

b. An annual audit concerning the operation of the escrow account shall be submitted to the commission 90 days after the end of the Iowa greyhound association's fiscal year.

c. In the event that the Iowa greyhound association fails to conduct live dog racing during any calendar year, the Iowa greyhound association shall transfer any unused moneys in the escrow fund to the commission and shall receive no further distributions from the fund.

7.15(2) One-time payments.

a. *Administrative expenses.* All expenses incurred by the commission to administer the fund will be deducted before an amount is determined for distribution during each calendar year.

b. *Greyhound adoption agency (agency).* An agency will be reimbursed a dollar amount based upon original receipts and itemized expenses up to \$1,700 per greyhound. All documentation for reimbursement must be submitted to the commission office for consideration on a form prescribed by the commission. Distribution of reimbursement for qualifying requests will occur upon approval by the commission. The commission has sole discretion in determining the eligibility of receipts submitted. No requests for reimbursement will be accepted by the commission after October 31, 2016. For an agency to be eligible for reimbursement, the agency must prove to the commission that:

- (1) The agency physically handled the greyhound to facilitate the adoption;
- (2) The agency has a no-kill policy;
- (3) The greyhound raced in Iowa; and
- (4) The greyhound was placed into adoption due to the cessation of racing.

c. *Greyhound kennel owners.* Greyhound kennel owners are eligible to recover costs up to \$5,000 associated with the removal of equipment from the kennels at the pari-mutuel dog racetrack located in Pottawattamie County. For a greyhound kennel owner to be eligible for reimbursement, the owner must prove to the commission that the expenses were incurred as a result of the removal of property, excluding the transporting of the greyhounds. Greyhound kennel owners shall submit original receipts and itemize the expenses to the commission to verify expenditures. All documentation for reimbursement must be submitted to the commission office for consideration on a form prescribed by the commission. The commission has sole discretion in determining the eligibility of the receipts and expenses submitted. Distribution of reimbursement for qualifying requests will occur upon approval by the commission. No requests for reimbursement will be accepted by the commission after October 31, 2016.

d. *Trainers.* The trainer of record for the kennel employed at the pari-mutuel dog racetrack located in Pottawattamie County upon the closing of the racetrack in December 2015 shall receive \$8,000 for each year of service during the five-year period from 2011 through 2015. Proof of employment for each year for which payment is requested must be sent to the commission. The commission has sole discretion in determining the eligibility of the proof of employment submitted. Distribution for qualifying requests will occur upon approval by the commission. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

e. *Assistant trainers.* Assistant trainers employed, present and handling the day-to-day affairs at the pari-mutuel dog racetrack located in Pottawattamie County at the closing of the racetrack in December 2015 shall receive \$4,000 for each year of service during the five-year period from 2011 through 2015. Proof of employment for each year for which payment is requested must be sent to the commission. Distribution for qualifying requests will occur upon approval by the commission. Any assistant trainer who is not employed through the closing of the racetrack in December 2015 shall be eligible for payments only if the kennel owner certifies in writing the assistant trainer's services are not needed. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

f. *Financial hardship.* Industry participants are eligible to receive up to \$100,000 from the commission if they can demonstrate a need to be compensated due to hardships caused by the closing of the pari-mutuel dog racetrack located in Pottawattamie County. The burden of demonstrating hardship is on the applicant. The applicant shall submit in writing the request and basis for compensation including original receipts, if applicable, and itemized expenses. The commission has sole discretion in determining the eligibility of the applicant and the authentication of information to demonstrate hardship. Distribution for qualifying requests will occur upon approval by the commission. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

g. *Live greyhound racing in Dubuque County.* Should live racing cease in Dubuque County in or after calendar year 2015 but prior to 2022, the commission will establish an application process for one-time payments related to the cessation of racing in Dubuque County. The commission has sole discretion in establishing this process.

7.15(3) Annual payments. After all one-time payments have been paid from the fund, the remainder of the fund will be distributed to industry participants. The remainder of the fund shall be distributed as follows:

a. Seventy percent of the fund shall be paid as past-performance distributions based on the percentage of purse winnings and the department of agriculture and land stewardship awards the industry participant received from 2010 through 2014. Information pertaining to purse winnings and breeders awards will be obtained from the greyhound racetracks in Pottawattamie and Dubuque counties and from the department of agriculture and land stewardship.

b. Thirty percent of the fund shall be paid to qualifying greyhound industry participants without regard to purse winnings.

(1) Points will be awarded to the following recipients:

1. Greyhound farm owners shall receive 1,060 points for each year of operation from 2010 through 2014, provided the farm was licensed by the department of agriculture and land stewardship from 2010 through 2014.

2. Greyhound breeders shall receive 32 points for each greyhound the breeder whelped and raised for the first six months of the greyhound's life in Iowa as recorded with the department of agriculture and land stewardship from 2010 through 2014.

(2) The applicant's pro rata share of the overall points awarded will be converted to the pro rata basis of the moneys distributed to qualifying greyhound industry participants without regard to purse winnings.

c. Information pertaining to registered greyhound farms or greyhounds individually registered at whelping will be obtained from the department of agriculture and land stewardship.

d. Fund recipients, identified by independent tax identification numbers, shall be limited to \$3 million over the life of the fund. In the event live racing in Dubuque County ends and, as a result, there are remaining moneys to be deposited into the fund to be distributed to qualifying greyhound participants, the commission shall establish a new limit for fund recipients to be received over the life of the fund.

e. The commission has the sole discretion in determining the eligibility of the documentation submitted as it relates to claims under this rule.

f. The first of the annual payments will be distributed no later than April 2017 with payment each year following in April. The last payment will be distributed April 2022.

[ARC 2198C, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapter 99D.

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⁰ Two or more ARCs

¹ Effective date of subrule 7.9(1) delayed 70 days by the Administrative Rules Review Committee at its 12/10/86 meeting. Delay lifted by the Administrative Rules Review Committee at its 1/7/87 meeting.

CHAPTER 8
WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

491—8.1(99D) Definitions.

“Account” means an account approved by the commission for advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

“Administrator” means the administrator of the Iowa racing and gaming commission or the administrator’s designee.

“Advance deposit wagering” means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering.

“Advance deposit wagering center” means an actual location, the equipment, and the staff of a licensee, ADWO, or both involved in the management, servicing and operation of advance deposit wagering for the licensee.

“Advance deposit wagering operator” or *“ADWO”* means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen’s Benevolent and Protective Association to provide advance deposit wagering.

“Authorized receiver” means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host facilities.

“Betting interest” means a number assigned to a single runner, an entry or a field for wagering purposes.

“Board of stewards” means a board established by the administrator to review conduct by pari-mutuel facilities and their employees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

“Breakage” means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents. “Breakage” is the net pool minus payoff.

“Commission” means the Iowa racing and gaming commission.

“Commission representative” means an employee of the commission designated to represent the commission in matters pertaining to the operation of the mutuel department. In the absence of a specifically appointed representative, a commission steward will perform the functions and duties of the commission representative.

“Contest” means a race on which wagers are placed.

“Credits” means all positive inflows of money to an account.

“Dead heat” means that two or more runners have tied at the finish line for the same position in the order of finish.

“Debits” means all negative outflow of money from an account.

“Deposit” means a payment of money into an account.

“Double” means a wager to select the winners of two consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility and shall not be construed as a “quinella double.”

“Entry” means two or more runners are coupled in a contest because of common ties and a wager on one of them shall be a wager on all of them.

“Exacta” (may also be known as “perfecta” or “correcta”) means a wager selecting the exact order of finish for first and second in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering in Iowa.

“Field” means when the individual runners competing in a contest exceed the numbering capacity of the totalizator and all runners of the higher number shall be grouped together. A wager on one in the field shall be a wager on all. (No “fields” shall be allowed in greyhound racing.)

“Guest facility” means a facility which offers licensed pari-mutuel wagering on contests conducted by another facility (the host) in either the same state or another jurisdiction.

“Host facility” means the facility conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

“Interstate simulcasting” means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering.

“Intrastate simulcasting” means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

“Licensee” means a horse racetrack located in Polk County operating under a license issued by the commission.

“Licensee account holder” means any individual at least 21 years of age who successfully completed an application and for whom the licensee or ADWO has opened an account. “Licensee account holder” does not include any corporation, partnership, limited liability company, trust, estate or other formal or nonformal entity.

“Minus pool” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than \$1.05 for each \$1.00 wagered.

“Mutuel department” means that area of a racetrack where wagers are made and winning tickets are cashed and where the totalizator is installed and any area used directly in the operation of pari-mutuel wagering.

“Mutuel manager” means an employee of the facility who manages the mutuel department.

“Net pool” means the amount remaining in each separate pari-mutuel pool after the takeout percentage, as provided for by Iowa Code section 99D.11, has been deducted.

“Odds” means the approximate payoffs per dollar based on win pool wagering only on each betting interest for finishing first without a dead heat with another betting interest.

“Official” means that the order of finish for the race is “official” and that payoff prices based upon the “official” order of finish shall be posted.

“Order of finish” means the finishing order of each runner from first place to last place in each race. For horse racing only, the order of finish may be changed by the stewards for a rule infraction prior to posting of the official order of finish.

“Pari-mutuel pool” means the total amount of money wagered on each separate pari-mutuel pool for payoff purposes.

“Payoff” means the amount distributed to holders of valid winning pari-mutuel tickets in each pool as determined by the official order of finish and includes the amount wagered and profit.

“Pick (n)” means a betting transaction in which a purchaser selects winner(s) of (x) number of contests designated by the facility during one racing card.

“Pick three” means a wager to select the winners of three consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Place” means a runner finishing second.

“Place pick (n) pools” means a wager to select the first- or second-place finisher in each of a designated number of contests.

“Place pool” means the total amount of money wagered on all betting interests in each race to finish first or second.

“Post time” means the scheduled starting time for a contest.

“Proper identification” means a form of identification accepted in the normal course of business to establish that the person making a transaction is a licensee account holder.

“Quinella” means a wager selecting two runners to finish first and second, regardless of the order of finish, and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Quinella double” means a wager which consists of selecting the quinella in each of two designated contests and is an entirely separate pool from all other pools and has no connection with or relation to any other pool conducted by the facility.

“Runner” means each entrant in a contest, designated by a number as a betting interest.

“Sales transaction data” means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from the processing of sales transaction data, such as handle.

“Secure personal identification code” means an alpha-numeric character code provided by a licensee account holder as a means by which the licensee or ADWO may verify a wager or account transaction as authorized by the licensee account holder.

“Show” means a runner finishing third.

“Show pool” means the total amount of money wagered on all betting interests in each contest to finish either first, second or third.

“Source market fee” or *“host fee”* means the part of a wager that is made on any race by a person who is a licensee account holder and that is returned to the licensee and the Iowa Horsemen’s Benevolent and Protective Association pursuant to the terms of a negotiated agreement as required by 491—8.6(99D).

“Steward” means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

“Superfecta” means a wager selecting the exact order of finish for first, second, third, and fourth in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Totalizator” means a machine for registering wagers and computing odds and payoffs based upon data supplied by each pari-mutuel ticket-issuing machine.

“Trifecta” means a wager selecting the exact order of finish for first, second, and third in that race and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“Tri-superfecta” means a wager selecting the exact order of finish for first, second and third in the first designated tri-super contest combined with selecting the exact order of finish for first, second, third and fourth in the second designated tri-super contest.

“Twin quinella” means a wager in which the bettor selects the first two finishers, regardless of order, in each of two designated contests. Each winning ticket for the twin quinella must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool.

“Twin superfecta” means a wager in which the bettor selects the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool.

“Twin trifecta” means a wager in which the bettor selects the three runners that will finish first, second, and third in the exact order as officially posted in each of the two designated twin trifecta races.

“Underpayment” means when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication in payoffs results in less money returned to the public than is actually due.

“Win” means a runner finishing first.

“Win pool” means the total amount wagered on all betting interests in each contest to finish first.

“Withdrawal” means a payment of money from an account by the licensee or ADWO to the licensee account holder when properly requested by the licensee account holder.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—8.2(99D) General.

8.2(1) *Wagering.* Each facility shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalizator shall be tested prior to and during the meeting as required by the commission. Annually, the facility shall have an external audit, approved by the administrator, of the totalizator system. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited, and any person attempting to participate in prohibited wagering shall be ejected or excluded from facility grounds.

8.2(2) *Records.* The facility shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each facility and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

The facility shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

8.2(3) *Pari-mutuel tickets.* A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the facility and is evidence of the obligation of the facility to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The facility shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold and for a specified period after the last day of the meeting as provided in paragraph 8.2(4) "g."

a. To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the facility and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:

- (1) The name of the facility operating the meeting.
- (2) A unique identifying number or code.
- (3) Identification of the terminal at which the ticket was issued.
- (4) A designation of the performance for which the wagering transaction was issued.
- (5) The contest number for which the pool is conducted.
- (6) The type(s) of wagers represented.
- (7) The number(s) representing the betting interests for which the wager is recorded.
- (8) The amount(s) of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

b. No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the facility. The facility may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in paragraph 8.2(4) "e."

8.2(4) *Pari-mutuel ticket sales.*

a. Pari-mutuel tickets shall not be sold by anyone other than a facility licensed to conduct pari-mutuel wagering.

b. No pari-mutuel ticket may be sold on a contest for which wagering has already been closed, and no facility shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator is closed for wagering on such contest.

c. Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor prior to leaving the seller's window.

d. Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official." Any subsequent change in the order of finish or award of purse money(s) as may result from a subsequent ruling by the stewards or administrator shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

e. The facility shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization from the administrator.

f. The facility shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

g. Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the facility where the wager was made within 60 days following the close of the meeting during which the wager was made. Failure to present any such ticket within 60 days shall constitute a waiver of the right to receive payment.

8.2(5) *Advance performance wagering.* No facility shall permit wagering to begin more than one hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the administrator.

8.2(6) *Claims for payment from pari-mutuel pool.* At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the facility in any case where the facility has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the administrator, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the administrator within 48 hours.

a. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in paragraph 8.2(3) “*a*” of these general provisions, the facility shall make a recommendation to accompany the claim forwarded to the administrator as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

b. In the case of a claim made for payment on a pari-mutuel wager, the administrator shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the facility, may deny the claim, or may make such other order as the administrator may deem proper.

8.2(7) *Payment for errors.* If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed, and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

a. Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs are equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be added to the corresponding pool of the next contest. If an underpayment is discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the administrator until being added, together with accrued interest, to the corresponding pool of the next meet.

b. Any claim not filed with the facility within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the facility shall have no further liability therefor.

c. In the event the error results in an overpayment to winning wagers, the facility shall be responsible for such payment.

8.2(8) *Betting explanation.* A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on facility grounds and available upon request through facility representatives.

8.2(9) *Display of betting information.*

a. Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

b. The probable payoff or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the administrator.

c. Official results and payoffs must be displayed upon each contest being declared official.

8.2(10) *Canceled contests.* If a contest is canceled or declared “no contest,” refunds shall be granted on valid wagers in accordance with these rules.

8.2(11) *Refunds.*

a. Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(1) Win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two.

(2) Place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three.

(3) Show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four.

b. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

8.2(12) *Coupled entries and mutuel fields.*

a. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

b. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

8.2(13) *Pools dependent upon betting interests.* Unless the administrator otherwise provides, at the time the pools are opened for wagering, the facility:

a. May offer win, place, and show wagering on all contests with six or more betting interests.

b. May prohibit show wagering on any contest with five or fewer betting interests scheduled to start.

c. May prohibit place wagering on any contest with four or fewer betting interests scheduled to start.

d. May prohibit quinella wagering on any contest with three or fewer betting interests scheduled to start.

e. May prohibit quinella double wagering on any contests with three or fewer betting interests scheduled to start.

f. May prohibit exacta wagering on any contest with three or fewer betting interests scheduled to start.

g. May prohibit trifecta wagering on any contest with five or fewer betting interests scheduled to start, or as provided in subparagraph 8.2(13) "g"(1) below:

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the facility.

(2) Reserved.

h. May prohibit superfecta wagering on any contest with seven or fewer betting interests scheduled to start.

i. May prohibit twin quinella wagering on any contests with three or fewer betting interests scheduled to start.

j. May prohibit twin trifecta wagering on any contests with seven or fewer betting interests scheduled to start, except as provided in subparagraph 8.2(13) "g"(1).

k. May prohibit tri-superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

l. May prohibit twin superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

8.2(14) *Prior approval required for betting pools.*

a. A facility that desires to offer new forms of wagering must apply in writing to the administrator and receive written approval prior to implementing the new betting pool.

b. The facility may suspend previously approved forms of wagering with the prior approval of the administrator. Any carryover shall be held until the suspended form of wagering is reinstated. A facility may request approval of a form of wagering or separate wagering pool for specific requirements.

8.2(15) *Closing of wagering in a contest.*

a. All wagering shall stop and all pari-mutuel machines shall be locked at post time or at the actual start of the races. Machines shall be automatically locked, unless unusual circumstances dictate that the stewards act differently.

b. The facility shall maintain, in good order, a system approved by the administrator for closing wagering.

8.2(16) *Complaints pertaining to pari-mutuel operations.*

a. When a patron makes a complaint to a facility regarding the mutuel department, the facility shall immediately issue a complaint report, setting out:

- (1) The name of the complainant;
- (2) The nature of the complaint;
- (3) The name of the persons, if any, against whom the complaint was made;
- (4) The date of the complaint;
- (5) The action taken or proposed to be taken, if any, by the facility.

b. The facility shall submit every complaint report to the commission within five days after the complaint was made.

8.2(17) *Facility/vendor employees.* All facility/vendor employees shall report immediately to the administrator any known irregularities or wrongdoings by any person involving pari-mutuel wagering and shall cooperate in subsequent investigations.

8.2(18) *Unrestricted access.* The facility shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the facility that relate to pari-mutuel wagering.

8.2(19) *Totalizator breakdown.* In the event of irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

8.2(20) *Minimum wager and payoff.* The minimum wager to be accepted by any licensed facility for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be \$2.10. For all other wagers, the minimum wager to be accepted by any licensed facility shall be \$1. The minimum payoff for a \$1 wager shall be \$1.05. Any deviation from these minimums must be approved by the administrator. In cases where a minus pool occurs, the facility is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

8.2(21) *Minors prohibited from wagering.* No minor shall be permitted by any licensed facility to purchase or cash a pari-mutuel ticket.

8.2(22) *Emergency situations.* In the event of an emergency in connection with the mutuel department not covered in these rules, the pari-mutuel manager representing the facility shall report the problem to the stewards, and the stewards shall render a full report to the administrator or administrator's designee within 48 hours.

8.2(23) *Commission mutuel supervisor.* The commission may employ a mutuel supervisor with accounting experience to serve as the commission's designated representative at each race meeting as provided in Iowa Code section 99D.19. In the absence of a specifically appointed commission mutuel supervisor, the board of stewards or simulcast steward will perform the functions and duties of the commission.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 3608C, IAB 1/31/18, effective 3/7/18]

491—8.3(99D) Approval of pari-mutuel wagers.

8.3(1) *Pools permitted.* All pari-mutuel wagering pools approved by the commission shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross

pool as stipulated by Iowa Code section 99D.11. The remainder of the moneys in the pool shall constitute the net pool for distribution as payoff on winning wagers.

8.3(2) *Pari-mutuel wagering submissions.* Prior to conducting a new pari-mutuel wager, a facility shall submit proposals for the wager including, but not limited to, the wager type, calculation of payoff, refunds and distribution of pools. The wager submission, or requests for modification to an approved wager, shall be in writing and approved by the administrator or an administrator's designee prior to implementation.

8.3(3) *Public notice.* The public shall have access to the wagering rules and the calculation of payoffs and distribution of pools which are approved by the commission. Signage shall be conspicuously posted in the wagering area to direct patrons to the wagering area where this information can be viewed.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

491—8.4(99D) Simulcast wagering.

8.4(1) *General.*

a. Rules. All simulcasting must be transmitted live, and all wagering on simulcasting shall be made in accordance with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

b. Transmission. The method used to transmit sales transaction and data including, but not limited to, the odds, will pay, race results, and payoff prices must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory.

c. Communication. A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The facility is responsible during the racing program's operating hours for reporting any problems or delays to the public.

d. Approval.

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each facility conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to, economic conditions of a facility, impact on other facilities, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the facility granted simulcast authority to obtain all necessary permission from other states and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the facility at all times.

8.4(2) *Simulcast host.*

a. Every host facility, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

b. A host facility is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

c. Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which the simulcast originates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

d. The host facility shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

e. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

8.4(3) *Authorized receiver.*

a. An authorized receiver shall provide:

(1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host facility for providing any host facility patron information.

(2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest facilities.

(3) A voice communication system between each guest facility and the host facility providing timely voice contact among the commission representative, placing judges, and mutuel departments.

b. The guest facility and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

c. Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest facility shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.

d. The guest facility shall, in conjunction with the host facility(ies) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.

e. Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

f. The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

491—8.5(99D) Interstate common-pool wagering.

8.5(1) *General.*

a. All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.

b. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

c. Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.

d. In determining whether to approve an interstate common pool which does not include the host facility or which includes contests from more than one facility, the commission representative shall consider and may approve use of a bet type which is not utilized at the host facility, application of a takeout rate not in effect at the host facility, or other factors which are presented to the commission representative.

e. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

8.5(2) *Guest state participation in interstate common pools.*

a. With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state or with corresponding pools established by one or more other jurisdictions.

b. The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host facility or identical to that of other jurisdictions participating in a merged pool.

c. When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

d. Rules established in the state of the host facility designated for a pari-mutuel pool shall apply.

e. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

f. If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the facility shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere, except that, with the permission of the commission representative, the facility may alternatively determine either to pay winning tickets at the payoff prices at the host facility or to declare such accepted bets void and make refunds in accordance with the applicable rules.

8.5(3) *Host state participation in merged pools.*

a. With the prior approval of the commission representative, a facility licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other states and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host facility or comparable wagering pools established by two or more states.

b. When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

c. Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative specifically determines otherwise.

d. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

e. Any contract for interstate common pools entered into by the facility shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the facility or if, for any reason, the commission representative or facility determines that attempting to effect transfer of pool data from the guest state may endanger the facility's wagering pool, the facility shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

8.5(4) *Takeout rates in interstate common pools.*

a. With the prior approval of the commission representative, a facility wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.

b. A facility wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host facility and guest facility states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate common pool.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

491—8.6(99D) Advance deposit wagering.

8.6(1) *Authorization to conduct advance deposit wagering.*

a. A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to Iowa Code section 99D.11(6) "c" and these rules. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

b. The commission may conduct investigations or inspections or request additional information from the licensee as the commission deems appropriate in determining whether to allow the licensee to conduct advance deposit wagering.

c. The licensee shall establish and manage an advance deposit wagering center.

d. The commission may issue an ADWO license to an entity that enters into an agreement with the commission, the licensee, and the Iowa Horsemen's Benevolent and Protective Association. The terms of any ADWO's license shall include but not be limited to:

(1) Any source market fees and host fees to be paid on any races subject to advance deposit wagering.

(2) An annual ADWO license fee in an amount to be determined by the commission.

(3) Completion of all necessary background investigations.

(4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County from all of its licensee account holders.

(5) A bond or irrevocable letter of credit on behalf of the ADWO to be determined by the commission.

(6) A detailed description and certification of systems and procedures used by the ADWO to validate the identity and age of licensee account holders and to validate the legality of wagers accepted.

(7) Certification of prompt commission access to all records relating to licensee account holder identity and age in hard-copy or standard electronic format acceptable to the commission.

(8) Certification of secure retention of all records related to advance deposit wagering and accounts for a period of not less than three years or such longer period as specified by the commission.

(9) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

e. Commission access to and use of information concerning advance deposit wager transactions and licensee account holders shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

f. For each advance deposit wager made for an account by telephone, the licensee or ADWO shall make a voice recording of the entire transaction and shall not accept any such wager if the voice-recording system is inoperable. Voice recordings shall be retained for not less than six months and shall be made available to the commission for investigative purposes.

8.6(2) *Establishing an account.*

a. A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission.

b. Each application submitted will be subject to electronic verification with respect to the applicant's name, principal residence address and date of birth by either a national, independent individual reference service company or by means of a technology which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. An applicant's social security number may be necessary for completion of the verification process and for tax-reporting purposes. If there is a discrepancy between the application submitted and the information provided by the electronic verification or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted and given instructions as to how to resolve the matter.

c. The identity of a licensee account holder must be verified via electronic means or copies of other documents before the licensee account holder may place an advance deposit wager.

d. Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensee or ADWO provided that the licensee or ADWO informs the licensee account holder in writing prior to the change.

e. The applicant shall provide the licensee or ADWO with an alpha-numeric code to be used as a secure personal identification code when the licensee account holder is placing an advance deposit wager. The licensee account holder has the right to change this code at any time.

f. The licensee account holder shall receive at the time the account is approved a unique account identification number; a copy of the advance deposit wagering rules and such other information and material pertinent to the operation of the account; and such other information as the licensee, ADWO or commission may deem appropriate.

g. The account is nontransferable.

h. The licensee or ADWO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information used to open an account was false or that the account has been used in violation of these rules or the licensee's or ADWO's terms and conditions.

8.6(3) Operation of an account. The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval.

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CHAPTER 10
THOROUGHBRED AND QUARTER HORSE RACING

491—10.1(99D) Terms defined. As used in the rules, unless the context otherwise requires, the following definitions apply:

“Age” means the age of a horse reckoned from the first day of January of the year of foaling.

“Allowance race” means an overnight race for which eligibility and weight to be carried are determined according to specified conditions that include age, sex, earnings, and number of wins.

“Also eligible” means:

1. A number of eligible horses, properly entered, which were not drawn for inclusion in a race but which become eligible according to preference or lot when an entry is scratched prior to the scratch time deadline; or

2. The next preferred nonqualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

“Appeal” means a request for the commission or its designee to investigate, consider, and review any decisions or rulings of stewards.

“Arrears” means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

“Authorized agent” means a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner on whose behalf the agent will act.

“Bleeder” means a horse that hemorrhages from within the respiratory tract during a race, within one and one-half hours postrace, during exercise or within one and one-half hours of exercise.

“Bleeder list” means a tabulation of all bleeders to be maintained by the commission.

“Chemist” means any official racing chemist designated by the commission.

“Claiming race” means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules. (See also waived claiming rule in paragraph 10.6(18) “k.”)

“Commission” means the racing and gaming commission.

“Conditions” means qualifications that determine a horse’s eligibility to be entered in a race.

“Contest” means a competitive racing event on which pari-mutuel wagering is conducted.

“Coupled entry” means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes. (See also “Entry.”)

“Day” means a 24-hour period ending at midnight.

“Dead heat” means when the noses of two or more horses reach the finish line of a race at the same time.

“Declaration” means the act of withdrawing an entered horse from a race prior to the closing of entries.

“Detention barn” means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also the barn assigned by the commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication.

“Entry” means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training. (See also “Coupled entry.”)

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“Facility premises” means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities, parking lots, and any other areas under the jurisdiction of the commission.

“Field or mutuel field” means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track

totalizator. The highest numbered horse within the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.

"Foreign substances" means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

"Forfeit" means money due from a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by the stewards or the commission.

"Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

"Horse" means any equine (including equine designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing; specifically, an entire male 5 years of age and older.

"Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.

"Inquiry" means an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

"Jockey" means a professional rider licensed to ride in races.

"Licensee" means any person or entity licensed by the commission to engage in racing or related regulated activity.

"Maiden race" means a contest restricted to nonwinners.

"Meet/meeting" means the specified period and dates each year during which a facility is authorized by the commission to conduct pari-mutuel wagering on horse racing.

"Month" means a calendar month.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person or entity in whose name a horse is nominated for a race or series of races.

"Objection" means:

1. A written complaint made to the stewards concerning a horse entered in a race and filed not later than one hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or

2. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owner's authorized agent before the race is declared official.

"Official starter" means the official responsible for dispatching the horses for a race.

"Official time" means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

"Overnight race," also known as a purse race, means a contest for which entries close at a time set by the racing secretary.

"Owner" means a person or entity that holds any title, right or interest, whole or partial, in a horse, including the lessee and lessor of a horse.

"Paddock" means an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

"Performance" means a schedule of 8 to 12 races per day unless otherwise authorized by the commission.

"Post position" means the preassigned position from which a horse will leave the starting gate.

"Post time" means the scheduled time for horses to arrive at the starting gate for a contest.

"Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

"Purse" means the total cash amount for which a race is contested.

"Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse.

“*Race*” means a running contest between horses ridden by jockeys for a purse, prize, or other reward run at a facility in the presence of the stewards of the meeting. This includes purse races, overnight races and stakes races.

“*Recognized meeting*” means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and the commission for the mutual enforcement of rulings relating to horse racing.

“*Rules*” means the rules promulgated by the commission to regulate the conduct of horse racing.

“*Scratch*” means the act of withdrawing an entered horse from a contest after the closing of entries.

“*Scratch time*” means the deadline set by the facility for withdrawal of entries from a scheduled performance.

“*Smoke*” means the procedure of reviewing entries for correctness, eligibility, weight allowances, and medications.

“*Stakes race*” means a contest in which nomination (if applicable), entry, and starting fees contribute to the purse. No overnight race shall be considered a stakes race. Special designations or classifications for stakes races such as “graded stakes” or “black type” shall be determined by the appropriate breed registries or recognized authorities.

“*Starter*” means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

“*Steward*” means a duly appointed racing official with powers and duties specified by rules.

“*Subscription*” means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.

“*Test level*” means the concentration of a foreign substance found in the test sample.

“*Test sample*” means any bodily substance including, but not limited to, blood, urine, or hair taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

“*Totalizator*” means the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds, and payoff prices to patrons at a pari-mutuel wagering facility.

“*Veterinarian*” means a veterinarian holding a current unrestricted license issued by the state of Iowa veterinary regulatory authority and licensed by the commission.

“*Winner*” means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

“*Year*” means a calendar year.

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491—10.2(99D) Facilities’ responsibilities.

10.2(1) *Stalls.* The facility shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

10.2(2) *Paddocks and equipment.* The facility shall ensure that paddocks, starting gates, and other equipment subject to contact by different animals are kept in a clean condition and free of dangerous surfaces.

10.2(3) *Receiving barn and stalls.* Each facility shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The facility shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

10.2(4) *Fire protection.* The facility shall develop and implement a program for fire prevention on facility premises in accordance with applicable state fire codes. The facility shall instruct employees working on facility premises in procedures for fire prevention and evacuation. The facility shall, in accordance with state fire codes, prohibit the following:

- a. Smoking in horse stalls, feed and tack rooms, and in the alleyways.

- b. Sleeping in feed rooms or stalls.
- c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.
- d. Leaving any electrical appliance unattended or in unsafe proximity to walls, beds, or furnishings.
- e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.
- f. Locking a stall which is occupied by a horse.

The facility shall post a notice in the stable area which lists the prohibitions outlined in 10.2(4) “a” to “f” above.

10.2(5) Starting gate.

- a. During racing hours a facility shall provide at least two operable padded starting gates that have been approved by the commission.
- b. During designated training hours a facility shall make at least one starting gate and qualified starting gate employee available for schooling.
- c. If a race is started at a place other than in a chute, the facility shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

10.2(6) Distance markers.

- a. A facility shall provide and maintain starting point markers and distance poles in a size and position that can be clearly seen from the steward’s stand.
- b. The starting point markers and distance poles must be marked as follows:

| | |
|------------|------------------------------------|
| 1/4 poles | red and white horizontal stripes |
| 1/8 poles | green and white horizontal stripes |
| 1/16 poles | black and white horizontal stripes |
| 220 yards | green and white |
| 250 yards | blue |
| 300 yards | yellow |
| 330 yards | black and white |
| 350 yards | red |
| 400 yards | black |
| 440 yards | red and white |
| 550 yards | black and white horizontal stripes |
| 660 yards | green and white horizontal stripes |
| 770 yards | black and white horizontal stripes |
| 870 yards | blue and white horizontal stripes |

10.2(7) Detention enclosure. Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, hair, or other bodily substances or tissues for chemical analysis from horses that have run in a race. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

10.2(8) Ambulance. A facility shall maintain, on the premises during every day that its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the facility to comply with this rule.

10.2(9) Helmets and vests. Any person on horseback on facility grounds shall wear a protective helmet and safety vest.

10.2(10) Racetrack.

a. The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. A facility shall provide an adequate drainage system for the racetrack.

d. A facility shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The facility shall provide backup equipment for maintaining the track surface. A facility that conducts races on a turf track shall:

(1) Maintain an adequate stockpile of growing medium; and

(2) Provide a system capable of adequately watering the entire turf course evenly.

e. Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

10.2(11) Patrol films or video recordings. Each facility shall provide:

a. A video recording system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to record the prerace loading of all horses into the starting gate and to continue to record until the field is dispatched by the starter.

c. One camera, designated by the commission, to record the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

d. At the discretion of the stewards, video camera operators to record the activities of any horses or persons handling horses prior to, during, or following a race.

e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request of the commission, without cost, a copy of a video recording of a race.

g. That video recordings recorded prior to, during, and following each race be maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a video recording of a race.

i. Following any race in which there is an inquiry or objection, the video recorded replays of the incident in question which were utilized by the stewards in making their decision. The facility shall display to the public these video recorded replays on designated monitors.

10.2(12) Communications.

a. Each facility shall provide and maintain in good working order a communication system between:

(1) The stewards' stand;

(2) The racing office;

(3) The tote room;

(4) The jockeys' room;

- (5) The paddock;
- (6) The test barn;
- (7) The starting gate;
- (8) The weigh-in scale;
- (9) The video camera locations;
- (10) The clocker's stand;
- (11) The racing veterinarian;
- (12) The track announcer;
- (13) The location of the ambulances (equine and human); and
- (14) Other locations and persons designated by the commission.

b. A facility shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

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491—10.3(99D) Facility policies. It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the facility policies as published in literature distributed by the facility or posted in a conspicuous location.

491—10.4(99D) Racing officials.

10.4(1) General description. Every facility conducting a race meeting shall appoint at least the following officials:

- a. One of the members of a three-member board of stewards;
- b. Racing secretary;
- c. Assistant racing secretary;
- d. Paddock judge;
- e. Horse identifier;
- f. Starter;
- g. Clocker/timer;
- h. Three placing judges;
- i. Jockey room custodian;
- j. Mutuel manager;
- k. Clerk of scales;
- l. Minimum of two outriders;
- m. Horsemen's bookkeeper;
- n. Any other person designated by the commission.

10.4(2) Officials' prohibited activities. No racing official or racing official's assistant(s) listed in 10.4(1) while serving in that capacity during any meeting may engage in any of the following:

- a. Enter into a business or employment that would be a conflict of interest, interfere with, or conflict with the proper discharge of duties including a business that does business with a facility or a business issued a concession operator's license;
- b. Participate in the sale, purchase, or ownership of any horse racing at the meeting;
- c. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
- d. Sell or solicit horse insurance on any horse racing at the meeting, or any other business sales or solicitation not a part of the official's duties;
- e. Wager on the outcome of any race under the jurisdiction of the commission;
- f. Accept or receive money or anything of value for the official's assistance in connection with the official's duties;
- g. Consume or be under the influence of alcohol or any prohibited substance while performing official duties.

10.4(3) Single official appointment. No official appointed to any meeting, except placing judges, may hold more than one official position listed in 10.4(1) unless, in the determination of the stewards

or commission, the holding of more than one appointment would not subject the official to a conflict of interest or duties in the two appointments.

10.4(4) Stewards. (For practice and procedure before the stewards and the commission, see 491—Chapter 4.)

a. General authority.

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have authority to regulate and to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—paragraph 4.6(5) “e,” which are reasonably related to the conduct of a race or races and to discipline violators of these rules in accordance with the provisions of these rules.

(2) Period of authority. The stewards’ authority as set forth in this subrule shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet or with the completion of their business pertaining to the meeting.

(3) Attendance. All three stewards shall be present in the stand during the running of each race.

(4) Appointment of substitute. Should any steward be absent at race time, the state steward(s) shall appoint a deputy for the absent steward. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(5) Initiate action. The stewards shall take notice of questionable conduct or rule violations, with or without complaint, and shall initiate investigations promptly and render a decision on every objection and every complaint made to them.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final. A decision by the stewards regarding a disqualification of a horse due to a foul, interference, or a riding infraction may not be appealed.

b. Other powers and authority.

(1) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(2) All questions within their authority shall be determined by a majority of the stewards.

(3) The stewards shall have control over and access to all areas of the facility premises.

(4) The stewards shall have the authority to determine all questions arising with reference to entries and racing. Persons entering horses to run at licensed facilities agree in so doing to accept the decision of the stewards on any questions relating to a race or racing. The stewards, in their sole discretion, are authorized to determine whether two or more individuals or entities are operating as a single financial interest or as separate financial interests. In making this determination, the stewards shall consider all relevant information including, but not limited to, the following:

1. Whether the parties pay bills from and deposit receipts in the same accounts.

2. Whether the parties share resources such as employees, feed, supplies, veterinary and farrier services, exercise and pony riders, tack, and equipment.

3. Whether the parties switch horses or owner/trainer for no apparent reason, other than to avoid restrictions of being treated as a single interest.

4. Whether the parties engage in separate racing operations in other jurisdictions.

5. Whether the parties have claimed horses, or transferred claimed horses after the fact, for the other’s benefit.

6. If owners, whether one owner is paying the expenses for horses not in the owner’s name as owner.

7. If trainers, whether the relationship between the parties is more consistent with that of a trainer and assistant trainer.

(5) The stewards shall have the authority to discipline, for violation of the rules, any person subject to their control and, in their discretion, to impose fines or suspensions or both for infractions.

(6) The stewards shall have the authority to order the exclusion or ejection from all premises and enclosures of the facility any person who is disqualified for corrupt practices on any race course in any country.

(7) The stewards shall have the authority to call for proof that a horse is itself not disqualified in any respect, or nominated by, or, wholly or in part, the property of, a disqualified person. In default of proof being given to their satisfaction, the stewards may declare the horse disqualified.

(8) The stewards shall have the authority at any time to order an examination of any horse entered for a race or which has run in a race.

(9) In order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, the stewards have the authority to authorize a person(s) on their behalf to enter into or upon the buildings, barns, motor vehicles, trailers, or other places within the premises of a facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(10) The stewards shall maintain a log of all infractions of the rules and of all rulings of the stewards upon matters coming before them during the race meet.

(11) The state stewards must give prior approval for any person other than the commissioners or commission representative to be allowed in the stewards' stand.

c. Emergency authority.

(1) Substitute officials. When in an emergency, any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute and shall report it immediately to the commission.

(2) Substitute jockeys. The stewards have the authority, in an emergency, to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and inform the stewards of the substitution by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) Nonstarter. At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses. The stewards shall submit a written report to the commission of every such inquiry made by them.

(2) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(3) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at

their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter.

2. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(4) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and shall file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time. The protest must be made to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of scales, the stewards, or a person designated by the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest following the running of any race, and before the race is declared official, shall notify the clerk of scales, or a person designated by the stewards, of this intention immediately upon the arrival of the jockey at the scales.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's bookkeeper until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards not later than one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

e. Cancel wagering. The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races if such action is necessary to protect the integrity of pari-mutuel wagering.

10.4(5) Racing secretary.

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of race results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, and smoked. Exceptions to this rule must be approved by the stewards.

b. Conditions. The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Corrections to the conditions must be made before entries are taken.

c. Posting of entries. Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the office of the racing secretary and shall furnish that list to local newspaper, radio, and television stations.

d. Stakes and entrance money records. The racing secretary shall be caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Record of racing. The racing secretary shall, no later than the day following each race, attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, date of the race, and the type or conditions of the race.

f. Daily program. The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

- (1) The sequence of races to be run and post time for the first race;
- (2) The purse, conditions and distance for each race, and current track record for such distance;
- (3) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;

(4) The name of the trainer and the name of the jockey named for each horse together with the weight to be carried;

(5) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;

(6) The identification of each horse by name, color, sex, age, sire and dam;

(7) A notice that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing-out procedures; and

(8) Such other information as may be requested by the association or the commission.

g. *Handicapping.* The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap when weights are not stated in the condition of the race:

(1) Scale of weights for age. The scale of weights for age hereinafter listed shall be carried when conditions of races do not otherwise specify:

| Distance | Age | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|-----------------------|-------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| HALF MILE | Two Years | X | X | X | X | X | X | X | 105 | 108 | 111 | 114 | 114 |
| | Three Years | 117 | 117 | 119 | 119 | 121 | 123 | 125 | 126 | 127 | 128 | 129 | 129 |
| | Four Years | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |
| | Five Years and Up | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |
| SIX FURLONGS | Two Years | X | X | X | X | X | X | X | 102 | 105 | 108 | 111 | 111 |
| | Three Years | 114 | 114 | 117 | 117 | 119 | 121 | 123 | 125 | 126 | 127 | 128 | 128 |
| | Four Years | 129 | 129 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |
| | Five Years and Up | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |
| ONE MILE | Two Years | X | X | X | X | X | X | X | X | 96 | 99 | 102 | 102 |
| | Three Years | 107 | 107 | 111 | 111 | 113 | 115 | 117 | 119 | 121 | 122 | 123 | 123 |
| | Four Years | 127 | 127 | 128 | 128 | 127 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| | Five Years and Up | 128 | 128 | 128 | 128 | 127 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| MILE AND A QUARTER | Two Years | X | X | X | X | X | X | X | X | X | X | X | X |
| | Three Years | 101 | 101 | 107 | 107 | 111 | 113 | 116 | 118 | 120 | 121 | 122 | 122 |
| | Four Years | 125 | 125 | 127 | 127 | 127 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| | Five Years and Up | 127 | 127 | 127 | 127 | 127 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| MILE AND A HALF | Two Years | X | X | X | X | X | X | X | X | X | X | X | X |
| | Three Years | 98 | 98 | 104 | 104 | 108 | 111 | 114 | 117 | 119 | 121 | 122 | 122 |
| | Four Years | 124 | 124 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| | Five Years and Up | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 126 |
| TWO MILES | Two Years | X | X | X | X | X | X | X | X | X | X | X | X |
| | Three Years | 96 | 96 | 102 | 102 | 106 | 109 | 112 | 114 | 117 | 119 | 120 | 120 |
| | Four Years | 124 | 124 | 126 | 126 | 126 | 126 | 126 | 125 | 125 | 124 | 124 | 124 |
| | Five Years and Up | 126 | 126 | 126 | 126 | 126 | 126 | 126 | 125 | 125 | 124 | 124 | 124 |

(2) Weights listed.

1. In races of intermediate lengths, the weights for the shorter distance shall be carried.
2. In a race exclusively for two-year-olds, the weight shall be 122 pounds.
3. In a race exclusively for three-year-olds or four-year-olds, the weight shall be 126 pounds.

(3) Minimum weight.

1. Thoroughbreds. In all overnight races for two-year-olds, three-year-olds, or four-year-olds and older, the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicaps or to races written for three-year-olds and older.

2. Quarter horse and mixed races. In all overnight races for two-year-olds, the weight shall be 120 pounds; for three-year-olds, the weight shall be 122 pounds; and for four-year-olds and older, the weight shall be 124 pounds.

3. Quarter horse and mixed races. In qualifying for a speed index, standard weight shall be 120 pounds. Should any horse carry less than this amount in a race, one-tenth of a second will be added to the official time for each four pounds or fraction thereof less than 120 pounds.

(4) Sex allowances. In thoroughbred racing, sex allowances are obligatory. Sex allowances shall be applied in all thoroughbred races unless the conditions of the race expressly state to the contrary. If the conditions of the race are silent as to sex allowances, a sex allowance shall be applied. Sex allowances may not be declined. Two-year-old fillies shall be allowed three pounds; mares three years old and older are allowed five pounds before September 1 and three pounds thereafter. Sex allowances are not applicable for quarter horse or mixed races.

(5) Iowa-foaled horse allowance. Iowa-foaled horses that are properly registered and whose papers are stamped by the Iowa department of agriculture and land stewardship shall be allowed an additional three pounds beyond the stated conditions of the race if the race is not limited to Iowa-foaled horses. This allowance does not apply to stakes races.

h. Penalties not cumulative. Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

i. Winnings.

(1) All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings shall be determined on the basis of the normal rate of exchange prevailing on the day of the win. The amount of purse money earned is credited in United States currency, and there shall be no appeal for any loss on the exchange rate at the time of transfer from United States currency to that of another country.

(2) Winnings considered from January 1. Winnings during the year shall be reckoned by the racing secretary from the preceding January 1.

(3) Winner of a certain sum. "Winner of a certain sum" means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator shall be deducted from the amount won. In all stakes races, the winnings shall be computed on the value of the gross earnings.

(4) Winner's award. Rescinded IAB 5/16/01, effective 6/20/01.

j. Cancellation of a race. The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the race is canceled, any and all fees paid in connection with the race shall be refunded.

k. Coggins test. The racing secretary shall ensure that all horses have a current negative Coggins test. The racing secretary shall report all expired certificates to the stewards.

l. Registrations and supporting documents. The racing secretary shall be responsible for receiving, inspecting, and safeguarding all registrations and supporting documents submitted by the trainer while the horses are located on facility premises. Upon notification from a trainer of an alteration of the sex of a horse, the racing secretary shall note such alteration on the certificate of registration. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

10.4(6) Paddock judge.

a. General authority. The paddock judge shall:

(1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;

(2) Maintain a written record of all equipment, inspect all equipment of each horse saddled, and report any change thereof to the stewards;

(3) Prohibit any change of equipment without the approval of the stewards;
(4) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time and leave the paddock for the post in proper sequence;

(5) Supervise paddock schooling of all horses approved for such by the stewards;

(6) Report to the stewards any observed cruelty to a horse; and

(7) Ensure that only properly authorized persons are permitted in the paddock.

b. Paddock judge's list.

(1) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(2) At the end of each day, the paddock judge shall provide a copy of the list to the stewards.

(3) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

10.4(7) Horse identifier. The horse identifier shall:

a. When required, ensure the safekeeping of registration certificates and racing permits for horses stabled or racing on facility premises;

b. Inspect documents of ownership, eligibility, registration, or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;

c. Examine every starter in the paddock for sex, color, markings, and lip tattoo for comparison with its registration certificate to verify the horse's identity;

d. Supervise the tattooing, microchipping or branding for identification of any horse located on facility premises; and

e. Report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

10.4(8) Starter.

a. General authority. The starter shall:

(1) Have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;

(2) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

(3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions on race day before post time for each race;

(4) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and make said assessment known to the stewards; and

(5) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

b. Assistant starters. With respect to an official race, the assistant starters shall not:

(1) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(2) Impede the start of a race;

(3) Use excessive force, a whip or other device, with the exception of steward-approved tongs, to assist in loading a horse into the starting gate;

(4) Slap, boot, or otherwise dispatch a horse from the starting gate;

(5) Strike or use abusive language to a jockey; or

(6) Accept or solicit any gratuity or payment other than their regular salary, directly or indirectly, for services in starting a race.

c. Starter's list. No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because

of poor or inconsistent behavior or performance in the starting gate. Any horse on the starter's list shall be refused entry until the horse has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.

10.4(9) Timer/clocker.

a. General authority—timer.

(1) The timer shall accurately record the official time.

(2) At the end of a race, the timer shall post the official running time on the infield totalizator board on instruction by the stewards.

(3) At a facility equipped with an appropriate infield totalizator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(4) For backup purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least two stopwatches are used by the stewards or their representatives.

(5) The timer shall maintain, and make available for inspection by the stewards or the commission on request, a written record of fractional and finish times of each race.

b. General authority—clocker.

(1) The clocker shall be present during training hours at each track on facility premises which is open for training to identify each horse working out and to accurately record the distances and times of each horse's workout.

(2) Each day, the clocker shall prepare a list of workouts that includes the name of each horse which worked along with the distance and time of each horse's workout.

(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

10.4(10) Placing judges.

a. General authority. The placing judges shall determine the order of finish in a race as the horses pass the finish line and, with the approval of the stewards, may display the results on the totalizator board.

b. Photo finish.

(1) In the event the placing judges or the stewards request a photo of the finish, the photo finish sign shall be posted on the totalizator board.

(2) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalizator board.

(3) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the placing judges as an aid in determining the correct order of finish.

(4) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the placing judges shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the facility.

c. Dead heats.

(1) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(2) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalizator board and cause the numbers of the horse or horses involved to blink on the totalizator board.

10.4(11) Jockey room custodian. The jockey room custodian shall:

- a.* Supervise the conduct of the jockeys and their attendants while they are in the jockey room;
- b.* Keep the jockey room clean and safe for all jockeys;
- c.* Ensure all jockeys are in the correct colors and wearing the correct arm number before leaving the jockey room to prepare for mounting their horses;

- d.* Keep a daily film list as dictated by the stewards and have it displayed in plain view for all jockeys;
- e.* Keep a daily program displayed in plain view for the jockeys;
- f.* Keep unauthorized persons out of the jockey room;
- g.* Report to the stewards any unusual occurrences in the jockey room;
- h.* Assist the clerk of scales as required;
- i.* Supervise the care and storage of racing colors; and
- j.* Assign to each jockey a locker for the use of storing the jockey's clothing, equipment, and personal effects.

10.4(12) *Mutuel manager.* The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on any delay when requested by the state steward.

10.4(13) *Clerk of scales.* The clerk of scales shall:

- a.* Verify the presence of all jockeys in the jockey room at the appointed time;
- b.* Verify that each jockey has a current jockey's license issued by the commission;
- c.* Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;
- d.* Oversee the security of the jockey room including the conduct of the jockeys and their attendants;
- e.* Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;
- f.* Maintain the record of applicable winning races on all apprentice certificates at the meeting;
- g.* Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and
- h.* Assume the duties of the jockey room custodian in the absence of such employee.

10.4(14) *Outrider.*

a. The facility shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The facility shall appoint one outrider on the training track during all workouts. The outriders must be neat in appearance, wear approved helmets with the chin straps securely fastened, and wear approved safety vests while on the main track or training track.

b. The outriders shall:

- (1) Accompany the field of horses from the paddock to the post;
- (2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting themselves in a manner in conformity with the best interests of racing as determined by the board of stewards;
- (3) Assist jockeys with unruly horses;
- (4) Render assistance when requested by a jockey;
- (5) Be present during morning workouts to assist exercise riders as required by regulations;
- (6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider;
- (7) Ensure individuals using the track(s) are appropriately licensed; and
- (8) Promptly report jockey objections to the stewards after the finish of each race.

10.4(15) *Horsemen's bookkeeper.*

a. General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the facility and commission may prescribe.

b. Records.

- (1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the facility.

(4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

c. Moneys and funds on account.

(1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the facility;

2. In a trust account designated as "horsemen's trust account"; and

3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen's bookkeeper shall be bonded.

d. Payment of purses.

(1) The horsemen's bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes, and other moneys that properly come into the horsemen's bookkeeper's possession in accordance with the provisions of commission rules.

(2) The horsemen's bookkeeper may accept moneys due, belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(3) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, upon request, within two race days of the conclusion of the race day for all horses that were not selected for postrace drug testing.

(4) For horses that were selected for postrace drug testing, the horsemen's bookkeeper shall disburse the purse of such horses for each race and all stakes, entrance money, and jockey fees, upon request, within two race days of receipt of notification that all tests with respect to such horses have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(5) Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such horses that have been selected for postrace drug testing have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse of such horses having been selected for postrace drug testing within two race days of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No portion of purse money other than jockey fees shall be deducted by the facility for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or the person's duly authorized representative. The horsemen's bookkeeper shall mail to each owner a duplicate of each record of all deposits, withdrawals, or transfers of funds affecting the owner's racing account at the close of each race meeting.

f. Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

10.4(16) Patrol judges.

a. General authority. A facility may employ patrol judges who shall observe the running of the race and report information concerning the running of the race to the stewards.

b. Duty stations. Each patrol judge shall have a duty station assigned by the stewards.

10.4(17) Commission veterinarians.

a. The veterinarians shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23(2) and 99D.25(9). The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

c. The commission veterinarians shall not buy or sell any horse under their supervision; wager on a race under their supervision; or be licensed to participate in racing in any other capacity.

d. The stewards or commission veterinarians may request any horse entered in a race to undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

e. A commission veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track.

f. The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound, or unfit to race on a veterinarian's list that shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list in Iowa, bleeders exempt, may be allowed to enter only after it has been approved by the commission veterinarian. Any horse placed on the veterinarian's list will be removed from any future race in which the horse has been entered. Requests for the removal of any horse from the veterinarian's list will be accepted only after a minimum of three calendar days have elapsed from the placing of the horse on the veterinarian's list. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. Horses that are entered to race and then placed on the veterinarian's list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.

Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- (1) First incident – 14 days.
- (2) Second incident within 365-day period – 30 days.
- (3) Third incident within 365-day period – 180 days.
- (4) Fourth incident within 365-day period – barred for racing lifetime.

For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility specified in subparagraph (1). A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal. A horse which has been placed on a bleeder list in another jurisdiction pursuant to these rules shall be placed on a bleeder list in this jurisdiction.

h. The commission veterinarians shall supervise and ensure that the administration of furosemide and phenylbutazone is in compliance with Iowa Code section 99D.25A.

i. Rescinded IAB 9/29/04, effective 11/3/04.

j. The commission veterinarian or commission representative shall take receipt of veterinary reports as required by Iowa Code section 99D.25(10).

[ARC 0734C, IAB 5/15/13, effective 6/19/13; see Delay note at end of chapter; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—10.5(99D) Trainer, jockey, and jockey agent responsibilities.

10.5(1) Trainer.

a. Responsibility. The trainer is responsible for:

(1) The condition of horses entered in an official workout or race and, in the absence of substantial evidence to the contrary, for the presence of any prohibited drug, medication or other substance, including

permitted medication in excess of the maximum allowable level, in such horses, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

(2) Preventing the administration of any drug, medication, or other prohibited substance that may cause a violation of these rules. An “in-today” sign must be placed by 8 a.m. on race day next to the stall of a horse that is scheduled to race on that day. For horses shipping in on race day, the sign must be placed upon the horse’s arrival.

(3) Any violation of rules regarding a claimed horse’s participation in the race in which the trainer’s horse is claimed.

(4) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms, and other areas which have been assigned to the trainer by the facility and maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.

(5) Ensuring that fire prevention rules are strictly observed in the assigned stable area.

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant. If the trainer or designee is not present or does not allow for the administration of furosemide to a horse to be run on furosemide, said horse will be placed on the steward’s list for a minimum of five days starting the day after the violation.

(7) The proper identity, custody, care, health, condition, and safety of horses in the trainer’s charge.

(8) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer’s care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the stewards and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary.

(9) Training all horses owned wholly or in part by the trainer which are participating at the race meeting.

(10) Registering with the racing secretary each horse in the trainer’s charge within 24 hours of the horse’s arrival on facility premises.

(11) Ensuring that, at the time of arrival at the facility, each horse in the trainer’s care is accompanied by a valid health certificate which shall be filed with the racing secretary.

(12) Having each horse in the trainer’s care that is racing or stabled on facility premises tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. The certificate must be attached to the foal certificate.

(13) Using the services of those veterinarians licensed by the commission to attend horses that are on facility premises.

(14) Properly recording the sex of the horses in the trainer’s care with the horse identifier and the racing secretary and immediately reporting the alteration of the sex of a horse in the trainer’s care to the horse identifier and the racing secretary.

(15) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration. See Iowa Code subsections 99D.25(1) to 99D.25(3).

(16) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in the trainer’s charge.

(17) Promptly reporting the death of any horse in the trainer’s care on facility premises to the stewards, owner, and the commission veterinarian and complying with Iowa Code subsection 99D.25(5) governing postmortem examination.

(18) Maintaining a knowledge of the medication record and status of all horses in the trainer’s care.

(19) Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's custody, care, or control has received any prohibited drugs or medication.

(20) Representing an owner in making entries and scratches and in all other matters pertaining to racing.

(21) Eligibility of horses entered and weight or other allowance claimed.

(22) Ensuring the fitness of a horse to perform creditably at the distance entered.

(23) Ensuring that the trainer's horses are properly shod, bandaged, and equipped.

(24) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered. Any horse failing to report to the paddock will be placed on the steward's list for a minimum of five days starting the day after the violation.

(25) Personally attending to the trainer's horses in the paddock and supervising the saddling thereof, unless excused by the stewards.

(26) Instructing the jockey to give the jockey's best effort during a race and instructing the jockey that each horse shall be ridden to win.

(27) Witnessing the collection of a urine, blood, or hair sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

(28) Notifying horse owners upon the revocation or suspension of their trainer's license. A trainer whose license has been suspended for more than 30 days, whose license has expired or been revoked, or whose license application has been denied must inform the horse owners that, until the license is restored, the trainer can no longer be involved with the training, care, custody or control of their horses, nor receive any compensation from the owners for the training, care, custody or control of their horses. Upon application by the horse owner, the stewards may approve the transfer of such horse(s) to the care of another licensed trainer, and upon such approved transfer, such horse(s) may be entered to race. Upon transfer of such horse(s), the inactive trainer shall not be involved in any arrangements related to the care, custody or control of the horse(s) and shall not benefit financially or in any other way from the training of the horse(s).

(29) Ensuring that all individuals in their employ are properly licensed by the commission.

b. Restrictions on wagering. A trainer with a horse(s) entered in a race shall be allowed to wager only on that horse(s) or that horse(s) in combination with other horses.

c. Assistant trainers.

(1) Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include requirements set forth in 491—Chapter 6.

(3) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as are imposed on the licensed trainer, in which case the trainer shall be jointly responsible for the assistant trainer's compliance with the rules.

d. Substitute trainers.

(1) A trainer absent for more than five days from responsibility as a licensed trainer, or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(2) A substitute trainer shall accept responsibility for the horses in writing and shall be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race.

10.5(2) Jockey.

a. Responsibility.

(1) A jockey shall give a best effort during a race, and each horse shall be ridden to win.

(2) A jockey shall not have a valet attendant except one provided and compensated by the facility.

(3) No person other than the licensed contract employer or a licensed jockey agent may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make the jockey's own riding engagements.

(4) A jockey shall have no more than one jockey agent.

(5) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(6) A jockey shall promptly report objections to the outrider(s) following the finish of the race.

b. Jockey betting. A jockey shall be allowed to wager only on a race in which the jockey is riding. A jockey shall be allowed to wager only if:

(1) The owner or trainer of the horse that the jockey is riding makes the wager for the jockey;

(2) The jockey only wagers on the jockey's own mount to win or finish first in combination with other horses in multiple-type wagers; and

(3) Records of such wagers are kept and available for presentation upon request by the stewards.

c. Jockey's spouse. A jockey shall not compete in any race against a horse that is trained or owned by the jockey's spouse.

d. Jockey mount fees. Rescinded IAB 5/6/09, effective 6/10/09.

e. Entitlement. Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by the contract holder. An interest in the winnings only (such as trainer's percent) shall not constitute ownership.

f. Fee earned. A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned when injury to the horse or rider is not involved and jockeys, of their own free will, take themselves off their mounts. Any conditions or considerations not covered by the above shall be at the discretion of the stewards.

g. Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer shall be required to pay each of the jockeys the appropriate fee whether the jockeys ride in the race or not.

h. Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

i. Apprentices subject to jockey rules. Unless excepted under these rules, apprentices are subject to all rules governing jockeys and racing.

j. Conduct.

(1) Clothing and appearance. A jockey shall wear the racing colors furnished by the owner of the horse the jockey is to ride, plus solid white riding pants, top boots, and a number on the right shoulder on the saddlecloth corresponding to the mount's number given as shown on the saddlecloth and in the daily program. The stewards, at their discretion, may allow a jockey to wear solid black riding pants during poor weather or track conditions. The Jockeys' Guild logo, the Permanently Disabled Jockeys Fund logo, or the jockey's name may be displayed on the pants. The size of the display of the jockey's name on the pants is limited to a maximum of 32 square inches on each thigh of the pants on the outer sides between the hip and the knee, and 10 square inches on the rear at the base of the spine. A jockey shall not wear advertising or promotional material of any kind on clothing during a race, unless the following criteria are met:

1. A maximum of 32 square inches on each thigh of the pants on the outer side between the hip and knee and 10 square inches on the rear of the pant at the waistline at the base of the spine.

2. A maximum of 24 square inches on boots and leggings on the outside of each nearest the top of the boot.

3. A maximum of 6 square inches on the front center of the neck area (on a turtleneck or other undergarment).

4. Such advertising or promotional material does not compete with, conflict with, or infringe upon any current sponsorship agreement to the racing association race or race meet.

5. The stewards, at their discretion, may disallow any advertising that is not in compliance with this rule, any other rules of racing, or any advertising the stewards deem to be inappropriate, indecent, in poor taste, or controversial.

(2) Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.

(3) Confined to jockey room. Jockeys engaged to ride a race shall report to the jockey room on the day of the race at the time designated by the facility officials. The jockeys shall then report their engagements and any overweight to the clerk of scales. Thereafter, they shall not leave the jockey room, except by permission of the stewards, until all of their riding engagements of the day have been fulfilled. Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. Jockeys are not allowed to communicate with anyone but the trainer while in the room during the performance except with approval of the stewards. On these occasions, they shall be accompanied by a security guard.

(4) Whip prohibited. Jockeys may not use a whip on a two-year-old horse before April 1 of each year, nor shall a jockey or other person engage in excessive or indiscriminate whipping of any horse at any time.

(5) Spurs prohibited. Jockeys shall not use spurs.

(6) Possessing drugs or devices. Jockeys shall not have in their care, control, or custody any drugs, prohibited substances, or electrical or mechanical device that could affect a horse's racing performance.

k. Jockey effort. A jockey shall exert every effort to ride the horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

l. Duty to fulfill engagements. Jockeys shall fulfill their duly scheduled riding engagements, unless excused by the stewards. Jockeys shall not be forced to ride a horse they believe to be unsound or over a racing strip they believe to be unsafe. If the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, the jockey may be subject to disciplinary action. Jockeys shall be responsible to their agent for any engagements previously secured by the agent.

m. Riding interference.

(1) When the way is clear in a race, a horse may be ridden to any part of the course; but if any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, it is a foul.

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding. When a horse causes interference under this rule, every horse in the same race entered by the same owner or trainer who benefited from the interference may be disqualified at the discretion of the stewards.

(3) If the stewards determine the foul was intentional, or due to careless riding, the jockey shall be held responsible.

(4) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it started. If a horse is ridden, drifts, or swerves out of its lane in such a manner that it interferes with, impedes, or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

n. Jostling. Jockeys shall not jostle another horse or jockey. Jockeys shall not strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.

o. Partial fault/third-party interference. If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

p. Careless riding. A jockey shall not ride carelessly or willfully permit the mount to interfere with, intimidate, or impede any other horse in the race. A jockey shall not strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner

contrary to this rule, the horse may be disqualified; or the jockey may be fined, suspended, or otherwise disciplined; or other penalties may apply.

q. Jockey weighed out.

(1) Jockeys must be weighed for their assigned horse not more than 30 minutes before the time fixed for the race.

(2) A jockey's weight shall include the jockey's clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body.

(3) All other equipment shall be excluded from the weight.

r. Overweight limited. No jockey may weigh more than two pounds or, in the case of inclement weather, four pounds over the weight the horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of scales at least 60 minutes before the scheduled post time of the first race. However, a horse shall not carry more than seven pounds overweight, except in inclement weather when nine pounds shall be allowed. The overweight shall be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

(1) Weigh in. Upon completion of a race, jockeys shall ride promptly to the winner's circle and dismount. Jockeys riding the first four finishers, or at the discretion of the stewards a greater number, shall present themselves to the clerk of scales to be weighed in. If a jockey is prevented from riding the mount to the winner's circle because of accident or illness either to the jockey or the horse, the jockey may walk or be carried to the scales unless excused by the stewards.

(2) Unsaddling. Jockeys, upon completion of a race, must return to the unsaddling area and unsaddle their own horse, unless excused by the stewards.

(3) Removing horse's equipment. No person except the valet attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, jockeys shall carry to the scales all pieces of equipment with which they weighed out. Thereafter they may hand the equipment to the valet attendant.

(4) Underweight. When any horse places first, second, or third in a race and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which the jockey was weighed out, the mount may be disqualified and all purse moneys forfeited.

(5) Overweight. If the jockey is overweight, the jockey is subject to fine, suspension, or both.

s. Contracts. Rescinded IAB 5/16/01, effective 6/20/01.

t. Jockey fines and forfeitures. Jockeys shall pay any fine or forfeiture from their own funds within 48 hours of the imposition of the fine or at a time deemed proper by the stewards. No other person shall pay jockey fines or forfeitures for the jockey.

u. Competing claims. Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute shall be resolved by the stewards.

v. Jockey suspension.

(1) Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception in racing shall begin on the third day after the ruling or at the stewards' discretion.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission, whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission, shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why the withdrawal should not be deemed frivolous.

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete,

notwithstanding the fact that such jockey is under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. Official rulings for riding suspensions of ten days or less shall state: “The term of this suspension shall not prohibit participation in designated races.”

2. A listing of the designated races shall be posted in the jockey room and any other such location deemed appropriate by the stewards.

3. A suspended jockey must be named at time of entry to participate in any designated race.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Each designated trial race for a stake shall be considered one race. A jockey who rides in more than one designated race shall be allowed to be named to ride other races on a card, and such race card shall not count as a suspended race day.

10.5(3) Apprentice jockey. Upon completion of licensing requirements, the stewards may issue an apprentice jockey certificate allowing the holder to claim this allowance only in overnight races.

a. An apprentice jockey shall ride with a five-pound weight allowance beginning with the first mount and for one full year from the date of the jockey’s fifth winning mount.

b. If, after riding one full year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year or until the fortieth winner, whichever comes first. In no event shall a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

c. The steward may extend the weight allowance of an apprentice jockey when, in the discretion of the steward, the apprentice provides proof of incapacitation for a period of seven or more consecutive days. The allowance may be claimed for a period not to exceed the period such apprentice was unable to ride.

d. The apprentice jockey must have the apprentice certificate with the jockey at all times and must keep an updated record of the first 40 winners. Prior to riding, the jockey must submit the certificate to the clerk of scales, who will record the apprentice’s winning mounts.

10.5(4) Jockey agent.

a. Responsibilities.

(1) A jockey agent shall not make or assist in making engagements for a jockey other than the jockeys the agent is licensed to represent.

(2) A jockey agent shall file written proof of all agencies and changes of agencies with the stewards.

(3) A jockey agent shall notify the stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(4) All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made. Such records shall be subject to examination by the stewards at any time.

(5) No jockey agent shall represent more than two jockeys and one apprentice jockey at the same time except:

1. A jockey agent may represent three jockeys at a “mixed” meeting so long as no more than two of the jockeys ride the same breed.

2. A jockey agent may represent three jockeys at a race meeting exclusive of thoroughbred racing.

(6) A jockey agent must honor a first call given to a trainer or the trainer’s assistant trainer.

b. Prohibited areas. A jockey agent is prohibited from entering the jockey room, winner’s circle, racing strip, paddock, or saddling enclosure during the hours of racing.

c. A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—10.6(99D) Conduct of races.

10.6(1) Horses ineligible. Any horse ineligible to be entered for a race, or ineligible to start in any race, which competes in that race may be disqualified and the stewards may discipline the persons responsible for the horse competing in that race.

a. A horse is ineligible to enter a race when:

(1) The nominator has failed to identify the horse which is being entered for the first time, by name, color, sex, age, and the names of sire and dam as registered.

(2) A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate, or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any facility or regulatory agency.

(3) A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry or racing of some other horse under the name of the horse in question.

(4) A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person.

(5) A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person. In such cases, a presumption which may be rebutted is that the disqualified person and spouse constitute a single financial entity with respect to the horse.

(6) A horse is owned in whole or in part by an undisclosed person or interest.

(7) A horse has been nerved by surgical neurectomy.

(8) A horse has been trachea-tubed to artificially assist breathing.

(9) A horse has impaired eyesight in both eyes.

(10) A horse appears on the Iowa veterinarian's list, notwithstanding a horse appearing on the veterinarian's list as a "bleeder." In addition, a horse appearing on any starter's, stewards', or paddock judge's list, or the veterinarian's list in another jurisdiction, is ineligible unless the horse is removed from the list by the day of the race and approved by the board of stewards to enter.

(11) A horse is barred from racing in any racing jurisdiction.

b. A horse is ineligible to start a race when:

(1) The horse is not stabled on the premises of the facility by the time designated by the stewards.

(2) The horse's breed registration certificate is not on file with the racing secretary, or horse identifier, except where the racing secretary has submitted the certificate to the breed registry for correction or transfer of ownership. The stewards may, in their discretion, waive the requirement provided the registration certificate is in the possession of another board of stewards, a copy of the registration certificate is on file with the racing secretary, and the horse is otherwise properly identified. For claiming races, if the claimed horse has been approved by the stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the racing office within seven business days for transfer to the new owner before claiming funds will be approved for transfer by the stewards.

(3) The horse is not fully identified by an official tattoo on the inside of the upper lip.

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer unless excused by the stewards.

(5) No current negative Coggins test or current negative equine infectious anemia test certificate is attached to the horse's registration certificate.

(6) The stakes or entrance money for the horse has not been paid.

(7) The horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list.

(8) The horse is a first-time starter not approved by the starter and does not have a minimum of two published workouts.

(9) Within the past calendar year, the horse has started in a race that has not been reported in a nationally published monthly chartbook, unless, at least 48 hours prior to entry, the owner of the horse provides to the racing secretary performance records which show the place and date of the race, distance, weight carried, amount carried, and the horse's finishing position and time.

(10) In a stakes race, a horse has been transferred with its engagements, unless prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary.

(11) A horse is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper.

(12) A horse is subject to a lease not filed with the stewards.

(13) A horse is not in sound racing condition.

(14) A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg.

(15) A horse appears on the veterinarian's list as a "bleeder."

c. A horse is ineligible to start in a race when:

(1) A thoroughbred has shoes (racing plates) which have toe grabs with a height greater than two millimeters (0.07874 inches), bends, jars, caulks, stickers or any other traction device on the front hooves while racing or training on all racing surfaces.

(2) A quarter horse has front shoes which have toe grabs with a height greater than four millimeters (0.15748 inches), bends, jars, caulks, stickers or any other traction device worn on the front shoes.

10.6(2) Entries.

a. The facility shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or fax subsequently confirmed in writing by the owner, trainer, or licensed designee. When any entrant or nominator claims failure or error in the receipt by a facility of any entry or declaration, the entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration. Individuals who hold a jockey agent license, regardless of other licenses held, shall not be permitted to make entries after a time set by the stewards.

b. Upon the closing of entries the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.

c. Coupling. There will be no coupled entries in any race. In races, excluding stakes races, that overfill, trainers must declare preference of runners with identical ownership at time of entry. Same-owner, second-choice horses will be least preferred. A trainer or owner may not enter more than three horses in a race unless the race is split or divided.

d. Split or divided races.

(1) In the event a race is canceled or declared off, the facility may split any overnight race for which post positions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split race.

(3) A trainer shall be allowed to enter more than the maximum number of entries allowed under paragraph 10.6(2) "c" if the entries are declared at time of entry as "split entry only" and preference is given by the trainer for the trainer's first three entries.

(4) The racing secretary shall split an overnight race so that common ownership, identical ownership, or common trainer will divide as equally as possible between two or more races.

e. Entry weight. Owners, trainers, or any other duly authorized person who enters a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight shall not be changed except in the case of error and with the approval of the stewards. Weight allowances may be waived with the approval of the stewards.

f. Consecutive days. No horse shall be run on two consecutive calendar days.

g. Foreign entries. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish Turf Club, The Jockey Club of Great Britain, and the Société d'Encouragement.

h. Weight conversions. For the purpose of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

| | |
|-------------|---------------|
| 1 sixteenth | = 100 meters |
| 1 furlong | = 200 meters |
| 1 mile | = 1600 meters |

i. Name. The “name” of a horse means the name reflected on the certificate of registration, racing permit, or temporary racing permit issued by the breed registry. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the international code of suffixes and constitutes part of the horse’s registered name. The registered names and suffixes, where applicable, shall be printed in the official program.

j. Bona fide entry. No person shall enter or attempt to enter a horse for a race unless that entry is a bona fide entry, made with the intention that the horse is to compete in the race for which the horse was entered.

k. Registration certificate to reflect correct ownership. Every breed registry foal certificate filed with the racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of the horse. The name of the owner that is printed on the official program for the horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate unless a stable name has been registered with the commission for the owner or ownership.

l. Naming/engaging of riders. Riders must be named at the time of entry. If, at the conclusion of the draw of a race, a trainer does not have a rider, all riders who are available shall be made known to the trainer at that time via telephone or in person by the stewards or their designee. A trainer who does not name a rider prior to the conclusion of the draw of a race, and reasonable attempts have been employed to contact the trainer with no response, shall have an available rider engaged at the facility placed on the horse, determination of which shall be drawn by lot. Riders properly engaged as a first or second call in a race must fulfill their engagements as required in paragraph 10.5(2) “*l.*”

m. More than one race. No horse may be entered in more than one race, with the exception of stakes races, to be run on the same day on which pari-mutuel wagering is conducted.

n. Iowa-foaled horse. An Iowa-foaled horse shall not be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp, but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

10.6(3) Sweepstakes entries.

a. *Entry and withdrawal.* The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.

b. *Entrance money.* Entrance money shall be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money shall not be returned.

c. *Quarter horse scratches and qualifiers unable to participate in finals.* If a horse should be scratched from the time trial finals, the horse’s owner will not be eligible for a refund of the fees paid. If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned and the owner will receive last place money. If more than one horse should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, then those purse moneys shall be added together and divided equally among the horse owners.

10.6(4) Closing of entries.

a. Overnight entries. Entries for overnight racing shall be closed at 10 a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.

b. Sweepstakes entries. If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or faxed until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes that close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirements the secretary shall make. Closing for sweepstakes not during race meetings shall be at the office of the facility.

c. Exception. Nominations for stakes races shall not close nor shall any eligibility payment be due on a day in which the United States Postal Service is not operating.

10.6(5) Prohibited entries.

a. Entry by disqualified person. An entry made by a disqualified person or the entry of a disqualified horse shall be void. Any money paid for the entry shall be returned, if the disqualification is disclosed at least 45 minutes before post time for the race. Otherwise, the entry money shall be paid to the winner.

b. Limited partner entry prohibited. No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.

c. Altering entries prohibited. No alteration shall be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

d. Limitation on overnight entries. If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions shall be determined by lot conducted in public by the racing secretary.

e. Stake race entry limit. In a stake race, the number of horses which may compete shall be limited only by the number of horses nominated and entered. In any case, the facility's lawful race conditions shall govern.

f. Stewards' denial of entry. The stewards may, after notice to the entrant, subscriber, or nominator, deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of pari-mutuel wagering or to public confidence in racing.

10.6(6) Preferences and eligibles.

a. Also eligible. A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. These names shall be listed as "also eligible" to be used as entries if originally entered horses are withdrawn. Any owner, trainer, or authorized agent who has entered a horse listed as an "also eligible" and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race. "Also eligibles" shall have preference to scratch.

b. Preference system. A system using dates or stars shall be used to determine preference for horses being entered in races. The system being used will be at the option of the racing secretary and approved by the stewards. A preference list will be kept current by the racing secretary and made available to horsemen upon request.

c. Disputed decision. When the decision of a race is in dispute, all horses involved in the dispute, with respect to the winner's credit or earnings, shall be liable to all weights or conditions attached to the winning of that race until a winner has been finally adjudged.

10.6(7) Post positions. Post positions shall be determined by the racing secretary publicly and by lot. Post positions shall be drawn from "also eligible" entries at scratch time. In all races, horses drawn into the race from the "also eligible" list shall take the outside post positions, except in straightaway quarter horse racing. In straightaway quarter horse racing, the post position of the scratched horse shall be assigned to the horse "drawing in." In the event there is more than one scratch, the post positions shall be assigned by lot.

10.6(8) Scratch; declaring out.

a. Notification to the secretary. No horse shall be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing

secretary before the time set by the facility as scratch time. All scratches must be approved by the stewards.

b. Declaration irrevocable. Scratching or the declaration of a horse out of an engagement for a race is irrevocable.

c. Limitation on scratches. No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than seven betting interests, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than seven, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. Veterinarian scratches will be preferred and accepted without regard to the number of entries.

d. Scratch time. Unless otherwise set by the stewards, scratch time shall be:

- (1) Stakes races. Scratch time shall be at least 45 minutes before post time.
- (2) Other races. Scratch time shall be set by the stewards prior to the start of the meet.

10.6(9) Workouts.

a. When required. No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which the horse is entered. The workout must have occurred within the previous 30 days for a thoroughbred or within the previous 60 days for a quarter horse. Horses that have not started for a period of six months or more must have two published workouts, one of which must have occurred within the previous 30 days for thoroughbreds or within the previous 60 days for quarter horses. First-time starters must have at least two published workouts with one having occurred within the previous 30 days for thoroughbreds or within the previous 60 days for quarter horses, be approved from the gate by the starter, and have a published workout from the starting gate.

b. Identification. The timer or the stewards may require licensees to identify a horse in their care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

c. Information dissemination. If the stewards approve the timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information be furnished to the public in advance of the race including, but not limited to, the following means:

- (1) Announcement over the facility's public address system;
- (2) Transmission on the facility's message board;
- (3) Posting in designated conspicuous places in the racing enclosure; and
- (4) Exhibit on track TV monitors at certain intervals if the track has closed circuit TV. If the workout is published prior to the race in either the Daily Racing Form or the track program, then it shall not be necessary to make the announcements set forth above.

d. Restrictions. No horse shall be taken onto the track for training or a workout except during hours designated by the facility.

10.6(10) Equipment.

a. Whip and bridle limitations. Unless permitted by the stewards, no whip or substitute for a whip shall exceed one pound or 30 inches and no bridle shall exceed two pounds.

b. Equipment change. No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the stewards. No licensee may add blinkers or cheek pieces to a horse's equipment or discontinue their use without the prior approval of the starter. First-time starters must race with or without blinkers or cheek pieces in accordance with the gate approval card issued by the starter. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

10.6(11) Racing numbers.

a. Number display. Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

b. Field horses. In a combined field of horses, each horse in the field shall carry a separate number.

10.6(12) Valuation of purse money. Rescinded IAB 5/16/01, effective 6/20/01.

10.6(13) Dead heats.

a. When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

b. In the event of a dead-heat finish for second place and thereafter, when an objection to the winner of the race is sustained, the horses in the dead heat shall be considered to have run a dead heat for first place.

c. If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

10.6(14) and 10.6(15) Rescinded IAB 3/27/19, effective 5/1/19.

10.6(16) Equine infectious anemia (EIA) test.

a. *Certificate required.* No horse shall be allowed to start or be stabled on the premises of the facility unless a valid negative Coggins test or other laboratory-approved negative EIA test certificate is on file with the racing secretary.

b. *Trainer responsibility.* In the event of claims, sales, or transfers, it shall be the responsibility of the new trainer to ascertain the validity of the certificate for the horse within 24 hours. If the certificate is either unavailable or invalid, the previous trainer shall be responsible for any reasonable cost associated with obtaining a negative EIA laboratory certificate.

c. *Positive test reports.* Whenever any owner or trainer is furnished a positive Coggins test or positive EIA test result, the horse shall be removed by the owner or trainer from facility premises or approved farms within 24 hours of actual notice to the owner or trainer of the infection.

10.6(17) Race procedures.

a. *Full weight.* Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.

b. *Touching and dismounting prohibited.* After the horses enter the track, jockeys may not dismount or entrust their horse to the care of an attendant unless due to an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey, the starter, the assistant starter, the commission veterinarian, an outrider on a lead pony, or persons approved by the stewards may touch the horse before the start of the race. If a horse throws its jockey on the way from the paddock to the post, the horse must be returned to the point where the jockey was thrown, where the horse shall be remounted and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

c. *Jockey injury.* If a jockey is seriously injured on the way to the post, the horse shall be returned to the paddock, a replacement jockey obtained, and both the injured jockey and the replacement jockey will be paid by the owner.

d. *Twelve-minute parade limit.* After entering the track, all horses shall proceed to the starting post in not more than 12 minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses shall be started without unnecessary delay. All horses must participate in the parade carrying their weight and equipment from the paddock to the starting post, and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse being led except with permission of the stewards.

e. *Striking a horse prohibited.* In assisting the start of a race, no person other than the jockey, starter, assistant starter, or veterinarian shall strike a horse or use any other means to assist the start.

f. *Loading of horses.* Horses will be loaded into the starting gate in numerical order or in any other fair and consistent manner determined by the starter and approved by the stewards.

g. *Delays prohibited.* No person shall obstruct or delay the movement of a horse to the starting post.

10.6(18) Claiming races.

a. *Eligibility.*

- (1) Registered to race or open claim. No person may file a claim for any horse unless the person:
 1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting; or
 2. Is a licensed authorized agent, authorized to claim for an owner eligible to claim; or
 3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered with the racing secretary's office or who has not started a horse at the current meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued.
- (2) Number of claims.
 1. An ownership entity (sole owner, partnership or limited liability partnership, racing stable, corporation or limited liability corporation, or owner/trainer acting as an owner) shall not claim more than one horse in a race, and an authorized agent or trainer acting on behalf of an ownership entity shall not submit more than two claims in a race with two separate ownership interests.
 2. If an authorized agent or trainer acting on behalf of an ownership entity submits two claims in a race, the claims shall not be for the same horse.
 3. A trainer shall not receive more than two horses from any claiming race.
 - b. Procedure for claiming.* To make a claim for a horse, an eligible person shall:
 - (1) Deposit to the person's account with the horsemen's bookkeeper the full claiming price and applicable taxes as established by the racing secretary's conditions.
 - (2) File in a locked claim box maintained for that purpose by the stewards the claim filled out completely in writing and with sufficient accuracy to identify the claim on forms provided by the facility at least ten minutes before the time of the race.
 - c. Claim box.*
 - (1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their representatives for opening and publication of the claims.
 - (2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.
 - (3) No official of a facility shall give any information as to the filing of claims therein until after the race has been run.
 - d. Claim irrevocable.* After a claim has been filed in the claim box, it shall not be withdrawn.
 - e. Multiple claims on single horses.* If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.
 - f. Successful claims; later races.*
 - (1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.
 - (2) Eligibility price. A horse that is declared the official winner in the race in which it is claimed may not start in a race in which the claiming price is less than the amount for which it was claimed. After the first start back or 30 days, whichever occurs first, a horse may start for any claiming price. A horse which is not the official winner in the race in which it is claimed may start for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. No right, title, or interest for any claimed horse shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day.

(3) Racing elsewhere. A horse that was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

g. *Transfer after claim.*

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary.

(2) No claimed horse shall be delivered by the original owner to the successful claimant until the claim is approved by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter; and said successful claimant becomes the owner of the horse unless the claim is voided by the stewards under the provisions of this paragraph. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards shall have no effect upon the claim.

(3) The stewards shall void the claim and return the horse to the original owner if:

1. The claimed horse suffers a fatality during the running of the race, dies, or is euthanized before leaving the track.

2. The commission veterinarian, during the veterinarian's observation of the horse coming off the track or upon its arrival to the test barn, determines the horse will be placed on the veterinarian's list as lame. The stewards shall not void the claim if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the veterinarian's list as lame. An election made under this rule shall be entered on the claim form.

3. The race is called off, canceled, or declared no contest.

(4) Other-jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(5) Determination of sex and age. The claimant, within 48 hours, shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. Horses that are spayed or gelded shall be properly identified as such in the program. If the claimant finds that a mare is in fact spayed or that the status of a male horse is inaccurate as stated by the program, the claimant may return the horse for full refund of the claiming price.

(6) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(7) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(8) Obstructing the rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse, enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

h. *Elimination of stable.* An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.

i. *Disallowance of claim.* The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim; or if an eligible claimant improperly obtains information or access to horses by being present in the paddock during the claiming

race unless the claimant has a horse in that claiming race, as determined solely by the stewards. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.

j. Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule.

k. Waived claiming rule. At the time of entry into claiming races, the owner, trainer, or any authorized agent may opt to declare a horse ineligible to be claimed provided:

(1) The horse has not been an official starter at any racetrack for a minimum of 120 days since the horse's last race as an official starter (at time of race);

(2) The horse's last race as an official starter was one in which the horse was eligible to be claimed;

(3) The horse is entered for a claiming price equal to or greater than the claiming price at which the horse last started as an official starter;

(4) Failure of declaration of ineligibility at time of entry may not be remedied; and

(5) Ineligibility to be claimed shall apply only to the horse's first start as an official starter following each such 120-day or longer layoff.

l. Eligibility of in-foal filly or mare. An in-foal filly or mare shall be eligible to be entered into a claiming race only if the following conditions are fulfilled:

(1) Full disclosure of such fact is on file with the racing secretary and such information is posted in the secretary's office;

(2) The stallion service certificate has been deposited with the racing secretary's office before the horse runs;

(3) All payments due for the service in question and for any live progeny resulting from that service are paid in full;

(4) The release of the stallion service certificate to the successful claimant at the time of claim is guaranteed; and

(5) The cutoff for racing is 150 days of gestation.

10.6(19) Quarter horse time trial races.

a. Except in cases where the starting gate physically restricts the number of horses starting, each time trial shall consist of no more than ten horses.

b. The time trials shall be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten fastest times shall qualify to participate in the finals. If the time trials are conducted on two days, the horses with the five fastest times on the first day and the horses with the five fastest times on the second day shall qualify to participate in the finals. When time trials are conducted on two days, the racing office should make every attempt to split owners with more than one entry into separate days so that the owner's horses have a chance at all ten qualifying positions.

c. If the facility's starting gate has fewer than ten stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate post positions.

d. If only 11 or 12 horses are entered to run in time trials from a gate with 12 or more stalls, the facility may choose to run finals only. If 11 or 12 horses participate in the finals, only the first 10 finishers will receive purse money.

e. In the time trials, horses shall qualify on the basis of time and order of finish. The times of the horses in the time trial will be determined to the limit of the timer. The only exception is when two or more horses have the same time in the same trial heat. Then the order of finish shall also determine the preference in the horses' qualifying for the finals. Should two or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position(s), then a draw by public lot shall be conducted as directed by the stewards. Under no circumstances should stewards or placing judges attempt to determine horses' qualifying times in separate trials beyond the limit of the timer by comparing or enlarging a photo finish picture.

f. Except in the case of disqualification, under no circumstances shall a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.

g. Should a horse be disqualified for interference during the running of a time trial, it shall receive the time of the horse it is immediately placed behind plus one hundredth of a second, or the maximum accuracy of the electronic timing device. No adjustments will be made in the times recorded in the time trials to account for headwind, tailwind, and off track. In the case where a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse may be given no time plus one hundredth of a second, or the maximum accuracy of the electronic timing device.

h. Should a malfunction occur with an electronic timer on any time trial, finalists from that time trial will then be determined by official hand times operated by three official and disinterested persons. The average of the three hand times will be utilized for the winning time, unless one of the hand times is clearly incorrect. In such cases, the average of the two accurate hand times will be utilized for the winning time. The other horses in that race will be given times according to the order and margins of finish with the aid of the photo finish strip, if available.

i. When there is a malfunction of the timer during the time trials, but the timer operates correctly in other time trials, under no circumstances should the accurate electronic times be discarded and the average of the hand times used for all time trials. (The only exemption may be if the conditions of the stakes race so state, or state that, in the case of a malfunction of the timer in trials, finalists will be selected by order of finish in the trials.)

j. In the case where the accuracy of the electronic timer or the average of the hand times is questioned, the video of a time trial may be used to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. This method is accurate to approximately .03 seconds. Should the case arise where the timer malfunctions and there are no hand times, the stewards have the option to select qualifiers based on the video time.

k. Should there be a malfunction of the starting gate and one or more stall doors not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses in stalls with malfunctioning doors to be nonstarters. The stewards should have the option, however, to allow any horse whose stall door opened late but still ran a time fast enough to qualify to be declared a starter for qualifying purposes. In the case where a horse breaks through the stall door or the stall door opens prior to the exact moment the starter dispatches the field, the horse must be declared a nonstarter and all entry fees refunded. In the case where one or more, but not all, stall doors open at the exact moment the starter dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic times. If the electronic timer malfunctions in this instance, the average of the hand times, or, if not available, the video time, should be utilized for the horses that were declared starters.

l. There will be an also eligible list only in the case of a disqualification for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation. Should a horse be disqualified for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation, the next fastest qualifier shall assume the disqualified horse's position in the finals.

m. If a horse should be scratched from the time trials, the horse's owner will not be eligible for a refund of the fees paid, and that horse will not be allowed to enter the finals under any circumstances. If a horse that qualified for the finals is unable to enter due to racing soundness or is scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned, and the owner will receive, last place purse money. If more than one horse is scratched from the finals for any reason other than a positive drug test report or a rule violation, then the purse moneys shall be added together and divided equally among the owners.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—10.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.

10.7(1) Medication and administration.

a. No horse, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof, which is a narcotic or which could serve as a local anesthetic or tranquilizer or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby affecting its speed.

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph 10.7(1) "a" or "b," in a saliva, urine, blood, or hair sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered, with the intent that it would carry or that it did carry in its body while running in a race, a prohibited medication, drug, or foreign substance in violation of this rule.

d. Administration or possession of drugs.

(1) No person shall administer, cause to be administered, or participate or attempt to participate in any way in the administration of any medication, drug, foreign substance, or treatment by any route to a horse registered for racing on the day of the race prior to the race in which the horse is entered.

(2) No person except a veterinarian shall have in the person's possession any prescription drug. Prescriptions shall be written or dispensed or both only by duly licensed veterinarians in the context of a valid veterinarian-client-patient relationship and based upon a specific medical diagnosis. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to said person for such a prescription drug.

2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.

3. The horse or horses named in the prescription are then in said person's care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in their possession or administer to any horse within any racetrack enclosure any chemical or biological substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without the prior written approval from a commission veterinarian, after consulting with the board of stewards.

2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian after consultation with the board of stewards. The commission veterinarian shall not give such approval unless the person seeking the approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell, or furnish any feed supplement, tonic, veterinary preparation, medication, or any other substance that can be administered or applied to a horse by any route, to any person within the premises of the facility unless it is labeled in conformance with this rule or is otherwise labeled as required by law. A substance does not comply with this rule if the label is missing, illegible, tampered with, or altered.

1. Labels for all substances must include the name of the substance dispensed; the name of the dispensing person; the name of the horse or horses for which the substance is dispensed; the purpose for which the substance is dispensed; the dispensing veterinarian's recommendations for withdrawal before racing, if applicable; and the name of the person to whom dispensed.

2. Labels for medications or other prescribed substances must include all items from subparagraph 10.7(1) "d"(1) and, in addition, the date the prescription was filled; the name of the trainer or owner of the horse for whom the product was dispensed; dose; dosage; route of administration; duration of treatment of the prescribed product; and expiration date.

(5) No person shall have in the person's possession or in areas under said person's responsibility on facility premises any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in 10.7(1) "d"(4).

(6) No person shall possess, use, or distribute a compounded medication within the premises of the facility if there is a Food and Drug Administration-approved equivalent of that substance available for purchase unless approved by the commission veterinarian. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse. All compound medications must be labeled as required by law.

(7) Any drug or medication for horses which is used or kept on facility premises and which requires a prescription must be prescribed in compliance with applicable state law and regulations by a veterinarian who is duly licensed by the commission, the Iowa veterinary board, or the state in which the horse was located at the time of the examination, diagnosis and prescription.

e. Any person found to have administered, or caused, participated in, or attempted to participate in any way in the administration of a medication, drug, or foreign substance that caused or could have caused a violation of this rule shall be subject to disciplinary action.

f. The owner, trainer, groom, or any other person having charge, custody, or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration of a substance in violation of this rule. If the stewards find that any person has failed to show proper protection and guarding of the horse, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose discipline and take other action they deem proper under any of the rules including referral to the commission.

g. In order for a horse to be placed on the bleeder list in Iowa through reciprocity, that horse must be certified as a bleeder in another state or jurisdiction. A certified bleeder is a horse that has raced with furosemide in another state or jurisdiction in compliance with the laws governing furosemide in that state or jurisdiction.

h. The possession or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the commission is forbidden:

- (1) Erythropoietin;
- (2) Darbepoetin;
- (3) Oxyglobin®; and
- (4) Hemopure®.

i. The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

- (1) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;
- (2) The use of extracorporeal shock wave therapy or radial pulse wave therapy machines shall be limited to veterinarians licensed to practice by the commission;
- (3) Any extracorporeal shock wave therapy or radial pulse wave therapy machines on the association grounds must be registered with and approved by the commission or its designee before use;
- (4) All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

j. The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or designee.

k. Non-steroidal anti-inflammatory drugs (NSAIDs).

- (1) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. The level does not exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

- Phenylbutazone (or its metabolite oxyphenylbutazone) – 2 micrograms per milliliter;

- Flunixin – 20 nanograms per milliliter;
- Ketoprofen – 2 nanograms per milliliter.

2. The NSAIDs listed in numbered paragraph “1” or any other NSAIDs are prohibited from being administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 0.3 micrograms per milliliter, flunixin in a concentration below 3 nanograms per milliliter, or ketoprofen in a concentration below 1 nanogram per milliliter of serum or plasma, or the presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(2) Any horse to which an NSAID has been administered shall be subject to having a blood sample(s), urine sample(s) or both taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) or the presence of other drugs which may be present in the blood or urine sample(s).

10.7(2) Sample collection.

a. Under the supervision of the commission veterinarian, urine, blood, hair, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission’s representatives may designate. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

b. A facility shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings, and facilities including refrigeration and hot and cold running water must be approved by the commission. A security guard, approved by the commission, must be in attendance at each access to the detention barn during the hours designated by the commission.

c. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

d. During the taking of samples from a horse, the owner, responsible trainer, or a representative designated by the owner or trainer may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or representative of any objections to the source and documentation of the sample.

e. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or commission representative may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race, which may be found in barns or elsewhere on facility premises or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

f. Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission or commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

g. Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under the trainer’s care from the commission veterinarian or designated detention barn representative.

10.7(3) Chemists.

a. Tests are to be under the supervision of the commission, which shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing

and analysis of body fluid samples whether a foreign substance, medication, drug or metabolic derivative thereof is present.

b. All body fluid samples taken by or under direction of the commission veterinarian or commission representative shall be delivered to the laboratory of the official chemist for analysis.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening them for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of a test suspicious or positive for prohibited substances, the test shall be reconfirmed and the remaining portion, if available, of the sample shall be preserved and protected for one year following close of meet.

f. The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative, with the exception of notifying the state stewards of all positive tests.

g. In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

h. In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

i. No action shall be taken by the state steward until an official report signed by the chemist properly identifying the medication, drug, or other substance as well as the horse from which the sample was taken has been received.

j. The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

10.7(4) *Practicing veterinarian.*

a. Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the facility premises furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

b. The use of other than single-use disposable syringes and infusion tubes on facility premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove the needle and syringe from the facility premises.

c. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all procedures, medications and other substances which the veterinarian prescribed, administered, or dispensed for racing animals registered at the current race meeting as provided in Iowa Code section 99D.25(10). Reports shall be submitted not later than noon the day following the treatments' being reported. Reports shall include the racing animal, trainer, procedure, medication or other substance, dosage or quantity, route of administration, date and time administered, dispensed, or prescribed. Reports shall be signed by the practicing veterinarian.

d. Practicing veterinarians shall not have contact with an entered horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete unless approved by the state veterinarian except in the case of emergency. In case of an emergency, the state veterinarian must be notified prior to entering the stall. A documented attempt to contact the state veterinarian prior to entering the stall shall comply with the notification requirements pursuant to this rule. Any unauthorized contact may result in the horse's being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the stewards.

e. Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

f. Practicing veterinarians may have employees licensed as veterinary assistants working under their direct supervision. Activities of these employees shall not include direct treatment or diagnosis of any animal. The practicing veterinarian must be present if a veterinary assistant is to have access to injection devices or injectables. The practicing veterinarian shall assume all responsibility for a veterinary assistant.

g. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the facility must be performed by a licensed veterinarian or a licensed veterinary assistant.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 3446C, IAB 11/8/17, effective 12/13/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19]

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◊ Two or more ARCs

¹ Effective date (1/4/89) of 10.4(14), 10.4(19) “b” and 10.6 delayed by the Administrative Rules Review Committee until January 9, 1989, at its December 13, 1988, meeting; effective date of January 4, 1989, delayed seventy days by this Committee at its January 5, 1989, meeting. Effective date delay lifted by the Committee at its February 13, 1989, meeting.

² Effective date of 10.6(2) “g” (3) second paragraph delayed until adjournment of the 1997 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 8, 1996.

³ June 19, 2013, effective date of 10.4(4) “a” (6) and 10.4(4) “d” (3) “1” [Items 17 and 18 of ARC 0734C, respectively] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 2013.

CHAPTER 11 GAMBLING GAMES

491—11.1(99F) Definitions.

“Administrator” means the administrator of the racing and gaming commission or the administrator’s designee.

“Coin” means tokens, nickels, and quarters of legal tender.

“Commission” means the racing and gaming commission.

“Currency” means any coin or paper money of legal tender and paper forms of cashless wagering.

“Discount rate” means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

“Distributor’s license” means a license issued by the administrator to any entity that sells, leases, or otherwise distributes gambling games or implements of gambling to any entity licensed to conduct gambling games pursuant to Iowa Code chapter 99F.

“Facility” means an entity licensed by the commission to conduct gaming operations in Iowa.

“Facility grounds” means all real property utilized by the facility in the conduct of its gaming activity, including the grandstand, concession stands, offices, parking lots, and any other areas under the jurisdiction of the commission.

“Gambling game” means any game of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.

“Government sponsored enterprise debt instrument” means a negotiable, senior, noncallable debt obligation issued by an agency of the United States or an entity sponsored by an agency of the United States that on the date of funding possesses an issuer credit rating equivalent to the highest investment grade rating given by Standard & Poor’s or Moody’s Investment Services.

“Implement of gambling” means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a slot machine; or be integral to the conduct of a commission-authorized gambling game.

“Independent financial institution” means a bank approved to do business in the state of Iowa or an insurance company admitted to transact insurance in the state of Iowa with an A.M. Best insurance rating of “A” or other equivalent rating.

“Manufacturer’s license” means a license issued by the administrator to any entity that assembles, fabricates, produces, or otherwise constructs a gambling game or implement of gambling used in the conduct of gambling games pursuant to Iowa Code chapter 99F.

“Present value” means the current value of a future payment or series of payments, discounted using the discount rate.

“Qualified investment” means an Iowa state issued debt instrument, a United States Treasury debt instrument or a government sponsored enterprise debt obligation.

“Reserve” means an account with an independent financial institution or brokerage firm consisting of cash, qualified investments, or other secure funding method approved by the administrator used to satisfy periodic payments of prizes.

“Slot machine” means a mechanical or electronic gambling game device into which a player may deposit currency or forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

“Storage media” means EPROMs, ROMs, flash-ROMs, DVDs, CD-ROMs, compact flashes, hard drives and any other types of program storage device.

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491—11.2(99F) Conduct of all gambling games.

11.2(1) Commission policy. It is the policy of the commission to require that all facilities conduct gambling games in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for the employment and maintenance of suitable methods of operation

rests with the facility. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

11.2(2) *Activities prohibited.* A facility is expressly prohibited from the following activities:

- a.* Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.
- b.* Permitting persons who are visibly intoxicated to participate in gaming activity.
- c.* Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility including payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.
- d.* Possessing, or permitting to remain in or upon any facility grounds, any associated gambling equipment which may have in any manner been marked, tampered with, or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.
- e.* Permitting, if the facility was aware of, or should have been aware of, any cheating.
- f.* Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the grounds.
- g.* Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.
- h.* Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or acts as a detriment to the gaming industry.
- i.* Denying a commissioner or commission representative, upon proper and lawful demand, information or access to inspect any portion of the gaming operation.

11.2(3) *Gambling aids.* No person shall use, or possess with the intent to use, any calculator, computer, or other electronic, electrical, or mechanical device that:

- a.* Assists in projecting the outcome of a game.
- b.* Keeps track of cards that have been dealt.
- c.* Keeps track of changing probabilities.

11.2(4) *Wagers.* Wagers may only be made:

- a.* By a person present at a facility.
- b.* In the form of chips, coins, or other cashless wagering.
- c.* By persons 21 years of age or older.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.3(99F) Gambling games approved by the commission. The commission may approve a gambling game by administrative rule, resolution, or motion.

491—11.4(99F) Approval for distribution, operation, or movement of gambling games and implements of gambling.

11.4(1) *Approval.* Prior to distribution, a distributor shall request that the administrator inspect, investigate, and approve a gambling game or implement of gambling for compliance with commission rules and the standards required by a commission-designated independent testing facility. The distributor, at its own expense, must provide the administrator and independent testing facility with information and product sufficient to determine the integrity and security of the product, including independent testing conducted by a designated testing facility. The commission shall designate up to two independent testing facilities for the purpose of certifying electronic gambling games or implements of gambling.

11.4(2) *Trial period.* Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the gambling game in a facility. During the trial period, minor changes in the operation or design of

the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind from the operation of that gambling game.

11.4(3) *Gambling game submissions.* Prior to conducting a commission-authorized gambling game or for a trial period, a facility shall submit proposals for game rules, procedures, wagers, shuffling procedures, dealing procedures, cutting procedures, and payout odds. The gambling game submission, or requests for modification to an approved submission, shall be in writing and approved by the administrator or a commission representative prior to implementation.

11.4(4) *Public notice.* The public shall have access to the rules of play, payout schedules, and permitted wagering amounts. Signage shall be conspicuously posted on the gaming floor to direct patrons to the gaming floor area where this information can be viewed. All participants in all licensed gambling games are required to know and follow the rules of play. No forms of cheating shall be permitted.

11.4(5) *Operation.* Each gambling game shall operate and play in accordance with the representation made to the commission and the public at all times. The administrator or commission representative may order the withdrawal of any gambling game suspected of malfunction or misrepresentation, until all deficiencies are corrected. The administrator or commission representative may require additional testing by an independent testing facility at the expense of the licensee or distributor for the purpose of complying with this subrule.

11.4(6) *Distribution, movement and disposal.*

a. Except as otherwise authorized by the administrator, written notice, submitted by facsimile or electronic mail, shall be filed with the commission when a gambling game or implement of gambling is shipped, moved or disposed of. The written notice shall be provided as follows:

(1) At least five calendar days prior to arrival of a gambling game or implement of gambling at a licensed facility, the licensed distributor shall provide notice.

(2) At least one day before a gambling game is removed from or disposed of by a licensed facility, the licensed facility or the owner shall provide notice. All methods of disposal for gambling games or implements of gambling are subject to administrator approval.

b. The administrator may approve licensee transfers of gambling games or implements of gambling among subsidiaries of the licensee's parent company.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 1456C, IAB 5/14/14, effective 6/18/14]

491—11.5(99F) Gambling games authorized.

11.5(1) Craps, roulette, twenty-one (blackjack), baccarat, big six and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

11.5(2) Slot machines, video poker, and other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures without a table games license, video machines which simulate table games of chance shall not be allowed.

11.5(3) The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 491—11.4(99F).

a. Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

(1) The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

(2) The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

1. No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines; or

2. No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

3. No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

(3) The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

b. Noncashable credit payouts may be allowed as bonus feature payouts subject to the administrator's approval of individual accounting, expiration and redemption practices.

11.5(4) Gambling games of chance involving prizes awarded to participants through promotional activities at a facility.

a. Proposals. Gambling games of chance involving prizes awarded to participants through promotional activities shall be authorized and approved by the commission. Before a facility may conduct such gambling games, all proposals for terms, game rules, prizes, dates of operation and procedures for any gambling games of chance involving prizes awarded through promotional activities shall be submitted in writing to a commission representative for approval. The written submission shall be submitted to the commission representative at least 14 days in advance of the planned activity. Any changes to an approved gambling game of chance involving prizes awarded to participants through promotional activities shall also require the approval of the commission representative. Gambling games of chance involving prizes awarded to participants through promotional activities shall meet the following requirements:

(1) All rules of play shall be in writing and posted for public inspection;

(2) Such games shall be limited to participants 21 years of age or older;

(3) All games shall be conducted in a fair and honest manner, and all prizes advertised shall be awarded in accordance with the posted rules of play;

(4) All such games shall be conducted on the gaming floor and shall be conducted in accordance with the submission approved by the commission representative;

(5) No entry fees shall be permitted; and

(6) All employees of the facility shall be prohibited from participation.

b. Limits. Gambling games of chance involving prizes awarded to participants through promotional activities conducted at a facility shall be subject to the wagering tax pursuant to Iowa Code section 99F.11. However, in determining the adjusted gross receipts, the facility may consider all nonmonetary consideration expended by a participant and shall certify to the commission that the nonmonetary consideration is at least equal to the value of the prizes awarded.

11.5(5) Mechanical devices employing kickers or plates to direct coins, tokens or chips to fall over an edge into a payout hopper may be authorized as gambling games, subject to the following conditions:

a. All devices are subject to the requirements of rule 491—11.4(99F).

b. Devices shall accept no more than one coin, token or chip per play.

c. Tokens or chips used in devices shall have a value defined by the facility. Each assigned value must be displayed on the device. Values are subject to approval by the administrator.

d. Merchandise, coins, tokens, chips or other legal tender may be added to the device at the discretion of the facility:

(1) Anything of value added to a device must be in accordance with the approval of the device under the requirements of rule 491—11.4(99F); and

(2) Anything of value added to a device shall be documented, and documentation shall be retained in accordance with the retention requirements of 491—subrule 5.4(14).

e. Any coins, tokens or chips collected by the facility or not returned to individuals wagering on a device shall be included as gross receipts for the calculation of wagering tax on adjusted gross receipts:

(1) When a device is removed from play, coins, tokens, chips or other legal tender that were added to the device may be used to offset gross receipts for the calculation of wagering tax on adjusted gross receipts; and

(2) Merchandise or other items of value added to a device shall not be considered in the calculation of wagering tax on adjusted gross receipts.

f. Merchandise, coins, tokens, chips or other legal tender shall not be removed from a device while it remains in operation, except as winnings to an individual from a wager, or as the result of internal mechanisms of the device for collecting revenue, approved in accordance with rule 491—11.4(99F).

g. Anything of value in the machine shall not be tampered with or adjusted while a device remains in operation, except as required to return a malfunctioning device to operation.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—11.6(99F) Gambling game-based tournaments.

11.6(1) *Proposals.* Proposals for terms, game rules, entry fees, prizes, dates, and procedures must be submitted in writing and approved by a commission representative before a facility conducts any tournament. Any changes to approved tournaments must be submitted to the commission representative for review and approval prior to being implemented. The written proposal or change shall be submitted to a commission representative at least 14 days in advance of the planned activity. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

11.6(2) *Limits.* Tournaments must be based on gambling games authorized by the commission. Entry fees, less prizes paid, are subject to the wagering tax pursuant to Iowa Code section 99F.11. In determining adjusted gross receipts, to the extent that prizes paid out exceed entry fees received, the facility shall be deemed to have paid the fees for the participants.

11.6(3) *Tournament chips.* Tournament chips used as wagers in table game tournament proposals approved pursuant to this rule shall be imprinted with a number representing the value of the chip or shall be assigned a value. The facility shall provide that:

a. The assigned value of tournament chips be conspicuously displayed in the tournament area.

b. Internal controls which account for all tournament chips and include reconciliation, handling and variance procedures are approved by a commission representative.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9987B, IAB 2/8/12, effective 3/14/12]

491—11.7(99F) Table game requirements.

11.7(1) Devices that determine or affect the outcome of wagers or are used in the collection of wagers on table games are subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3). Removable storage media shall be sealed with tamper-evident tape by a commission representative prior to implementation.

11.7(2) Wagers.

a. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout.

b. Information pertaining to the minimum and maximum allowed at the table shall be posted on the game.

c. A facility may impose an aggregate payout limit on a per round basis for approved table game odds payouts that are greater than 50 to 1. If imposed, aggregate limits shall be at least the highest available award at the posted minimum bet, or \$25,000, whichever amount is greater, and the amount shall be posted on the game. When applying the aggregate payout limit to multiple players' wins, facilities shall calculate each player's win as a pro rata share of the aggregate payout limit. Alternate aggregate or individual player payout limits may be established, as determined by the administrator.

d. Any other fee collected to participate in a table game shall be subject to the wagering tax pursuant to Iowa Code section 99F.11.

11.7(3) Craps.

a. Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the

placement of gaming chips, are not allowed. A wager made on any bet may be removed or reduced at any time prior to a roll that decides the outcome of such wager unless the wager is a “Pass” or “Come” bet and a point has been established with respect to such bet or the wager is a proposition bet contingent on multiple rolls.

b. The shooter shall make a “Pass” or “Don’t Pass” bet and shall handle the two selected dice with one hand before throwing the dice in a simultaneous manner.

c. Each die used shall be transparent.

11.7(4) Twenty-one.

a. Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down, or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted. A facility or licensee shall not permit any player to engage in conduct that violates this paragraph.

b. At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in a prescribed order and in such a way that they can be readily arranged to indicate each player’s hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer’s hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall remove or alter any cards used to game at twenty-one or be permitted to do so by a casino employee.

c. Each player at the table shall be responsible for correctly computing the point count of the player’s hand. No player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

11.7(5) Roulette.

a. No person at a roulette table shall be issued or permitted to game with nonvalue gaming chips that are identical in color and design to value gaming chips or to nonvalue gaming chips being used by another person at that same table.

b. Each player shall be responsible for the correct positioning of the player’s wager on the roulette layout, regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions the player gives to the dealer regarding the placement of the player’s wager are correctly carried out.

c. Each wager shall be settled strictly in accordance with its position on the layout when the ball falls to rest in a compartment of the wheel.

11.7(6) Big six.

a. Wagers must be made before the spin of the wheel.

b. Each player shall be responsible for the correct positioning of the player’s wager on the layout regardless of whether that player is assisted by the dealer.

c. The wheel may be spun in either direction, but must complete at least three revolutions to be considered a valid spin.

d. Each wager shall be settled strictly in accordance with its position on the layout when the wheel stops with the winning indicator in a compartment of the wheel. In accordance with subrule 11.4(3), the rules shall include procedures addressing wheel stops that land between two compartments of the wheel. These procedures shall be posted at the game.

11.7(7) Poker.

a. When a facility conducts poker with an imprest dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer gaming chip banks must be submitted in writing and approved by a commission representative prior to use and must include, but not be limited to, controls to regularly monitor, investigate, and report table bank variances.

b. All games shall be played according to table stakes game rules as follows:

- (1) Only gaming chips or coins on the table at the start of a deal shall be in play for that pot.
 - (2) Concealed gaming chips or coins shall not play.
 - (3) A player with gaming chips may add additional gaming chips between deals, provided that the player complies with any minimum buy-in requirement.
 - (4) A player is never obliged to drop out of contention because of insufficient gaming chips to call the full amount of a bet, but may call for the amount of gaming chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.
 - c. Each player in a poker game is required to act only in the player's own best interest. The facility has the responsibility of ensuring that any behavior designed to assist one player over another is prohibited. The facility may prohibit any two players from playing in the same game.
 - d. Poker games where winning wagers are paid by the facility according to specific payout odds or pay tables are permitted.
 - e. The facility shall comply with and receive approval pursuant to subrule 11.4(3) for each type of poker game offered.
 - f. The facility may elect to offer a jackpot award generated from pot contributions at a table or group of tables for predesignated high-value poker hands, subject to the following requirements:
 - (1) Approval of the jackpot award rules must be obtained from a commission representative prior to play.
 - (2) Jackpot award rules and jackpot award amounts shall be posted in a conspicuous location within the poker room. Jackpot award amounts shall be updated no less than once per day.
 - (3) The facility shall divide pot contributions for any single qualifying award circumstance or event into no more than three jackpot award pools.
 - (4) The jackpot award pool containing the highest monetary value amount shall be the amount posted in the poker room and awarded to a qualifying player or players.
 - (5) If additional jackpot award pools are in use, the award pool containing the highest monetary value shall be used to seed the primary jackpot award pool.
 - (6) All moneys collected as pot contributions to a jackpot award payout shall be distributed in their entirety to the players; no facility shall charge an administration fee for distribution of a jackpot award.
- 11.7(8) Baccarat.** Before the first card is dealt for each round of play, each player is permitted to make a wager on the Banker's Hand, Player's Hand, Tie Bet, and any proposition bet if offered. All wagers shall be made by placing gaming chips on the appropriate areas of the layout. Once the first card has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager.
- 11.7(9) Preverified cards.** Cards that are verified prior to arrival at the facility may be approved by the administrator for use in table games authorized by this rule. Preverified cards may be shuffled or sequenced according to the licensee's specifications. Each manufacturer of preverified cards shall request approval of its cards, pursuant to subrule 11.4(1), and is subject to the following additional requirements:
- a. Each device used to verify or automate the randomization of the cards before they are shipped to a licensee shall be certified by a commission-designated independent testing facility.
 - b. The manufacturer shall develop and submit to the administrator a process for producing, shuffling, and packaging preverified cards that includes the following:
 - (1) A visual inspection of the back of each card, ensuring the cards are not flawed or marked in any way that might compromise the integrity of the gambling game.
 - (2) A verification that each package of cards contains the correct number of suits and cards in accordance with the commission-approved rules of the game for the game with which the package of cards is intended for use.
 - (3) Insertion of the cards in a package with a tamper-evident seal that bears conspicuous indication if the package has been opened. The exterior of the package shall indicate:
 1. The total number of decks contained within the package.
 2. The commission-authorized game with which the cards are intended for use.
 3. The color of the cards within the package.

(4) Generation of a receipt in the package or a label on the sealed package to include the following information:

1. The total number of cards and decks contained within the package.
2. The date and time the cards were shuffled, verified and packaged.
3. Information sufficient to determine the specific details regarding any persons or devices involved in the production, verification or packaging of the cards.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18]

491—11.8(99F) Keno.

11.8(1) Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

11.8(2) Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

11.8(3) For any type of wager offered, the payout must be at least 70 percent.

11.8(4) Multigame tickets shall be limited to 20 games.

11.8(5) Writing or voiding tickets for a game after that game has closed is prohibited.

11.8(6) All winning tickets shall be valid up to a maximum of one year from the date of purchase. All expired, unclaimed winning tickets shall be subject to the requirements in 491—paragraph 12.11(2) “b.”

11.8(7) The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

11.8(8) Adjusted gross receipts from keno games shall be the difference between dollar value of tickets written and dollar value of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

11.8(9) An area of a facility shall not be designated as gaming floor for the sole purpose of keno runners, who accept patron wagering funds remotely from the keno game location.

[ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—11.9(99F) Slot machine requirements.

11.9(1) *Payout percentage.* A slot machine game must meet the following maximum and minimum theoretical percentage payouts during the expected lifetime of the game.

a. A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory. Slot machine games with a bonus feature that is available with varying payouts based on the player's ability shall be allowed if the difference between the minimum and maximum payout for all ability-based outcomes does not exceed a 4 percent contribution to the overall theoretical payout of the slot machine game.

b. A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50 million games.

11.9(2) *Features.* Unless otherwise authorized by the administrator, each slot machine in a casino shall have the following features:

a. A casino number at least two inches in height permanently imprinted, affixed, or impressed on the outside of the machine so that the number may be observed by the surveillance camera.

b. A clear description displayed on the slot machine of any merchandise or thing of value offered as a payout including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the facility establishes a time limit upon initially offering the merchandise or thing of value, and the availability or unavailability to the patron of the optional cash equivalent value. A cash equivalent value shall be at least 75 percent of the fair market value of the merchandise or thing of value offered.

c. Devices, equipment, features, and capabilities, as may be required by the commission, that are specific to each slot machine after the prototype model is approved by the commission.

11.9(3) *Storage media.* Hardware media devices which contain game functions or characteristics, including but not limited to pay tables and random number generators, shall be verified and sealed with

evidence tape by a commission representative prior to being placed in operation, as determined by the administrator.

11.9(4) *Posting of the actual aggregate payout percentage.* The actual aggregate payout percentage to the nearest one-tenth of 1 percent (0.1%) of all slot machine games in operation during the preceding three calendar months shall be posted at the main casino entrance, cashier cages, and slot booths by the fifteenth day of each calendar month. For the purpose of this calculation, the actual aggregate payout percentage shall be the slot revenue reported to the commission during the preceding three calendar months divided by the slot coin-in reported to the commission during the preceding three calendar months subtracted from 100 percent.

11.9(5) *Communication equipment.* Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible, with read-only access, to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

11.9(6) *Meter clears.* Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2) “c,” a licensee must notify a commission representative. All meters recorded by the game must be retained according to the requirements in 491—subrule 5.4(14).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—11.10(99F) Slot machine hardware and software specifications.

11.10(1) *Hardware specifications.*

a. Electrical and mechanical parts and design principles shall not subject players to physical hazards.

b. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all required information for 30 days after power is discontinued from a slot machine. The backup shall be kept within the locked logic board compartment.

c. An identification badge permanently affixed by the manufacturer to the exterior of the cabinet shall include the following information:

- (1) The manufacturer;
- (2) A unique serial number;
- (3) The gaming device model number; and
- (4) The date of manufacture.

d. The operations and outcomes of each slot machine must not be adversely affected by influences from outside the device.

e. The internal space of a slot machine shall not be readily accessible when the front door is both closed and locked.

f. Logic boards and software storage media which significantly influence the operation of the game must be in a locked compartment within the slot machine.

g. The currency drop container must be in a locked compartment within or attached to the slot machine. Access to the currency storage areas shall be secured by separate locks which shall be fitted with sensors that indicate door open/closed or stacker removed.

h. No hardware switches may be installed that alter the pay tables or payout percentages in the operation of a slot machine. Hardware switches may be installed to control graphic routines, speed of play, and sound.

i. A display which automatically illuminates when a player has won a jackpot or other award not paid automatically and totally by the slot machine and which advises players that they will be paid by an attendant shall be located conspicuously on the slot machine.

j. A payglass/video display shall be clearly identified and shall accurately state the rules of the game and the award that will be paid to the player when the player obtains a specific combination of symbols or other criteria. All information required in this paragraph must be available and readable at all times the slot machine is in service.

k. A light that automatically illuminates when a player has won an amount or is redeeming credits that the machine cannot automatically pay, an error condition has occurred, or a “Call attendant”

condition has been initiated by the player shall be located conspicuously on top of the gaming device. At the discretion of the administrator, tower lights may be shared among certain machines or substituted by an audible alarm.

l. If credits are collected and the total credit value is unable to be paid automatically by the gaming device, the device shall lock up until the credits have been paid and the amount collected has been cleared by an attendant handpay or normal operation has been restored.

11.10(2) Software specifications.

a. Random number generator. Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

- (1) Be statistically independent.
- (2) Conform to the desired random distribution.
- (3) Pass various recognized statistical tests.
- (4) Be unpredictable.
- (5) Have a testing confidence level of 99 percent.

b. Continuation of game after malfunction is cleared. Each slot machine must be capable of continuing the current game with all current game features after a malfunction is cleared. This paragraph does not apply if a slot machine is rendered totally inoperable; however, the current wager and all credits appearing on the screen prior to the malfunction must be returned to the player.

c. Electronic accounting meters. Each slot machine must maintain electronic accounting meters at all times, regardless of whether the slot machine is being supplied with power. For each meter recording values, the slot machine must be capable of maintaining no fewer than ten digits. For each meter recording occurrences, the slot machine must be capable of maintaining no fewer than eight digits. No slot machine may have a mechanism that will cause the electronic accounting meters to automatically clear due to an error. The electronic meters must record, at a minimum, the following:

- (1) Coin-in.
- (2) Coin-out.
- (3) Drop.
- (4) Attendant-paid jackpots.
- (5) Currency in.
- (6) Currency out.
- (7) External door.
- (8) Bill validator door.
- (9) Machine-paid external bonus payout.
- (10) Attendant-paid external bonus payout.
- (11) Attendant-paid progressive payout.
- (12) Machine-paid progressive payout.

d. Error conditions. Each slot machine shall display and report error conditions to the online monitoring system. For machines that display only a code, definitions for all codes must be permanently affixed to the interior of the slot machine. Error conditions that must be displayed and reported include but are not limited to:

- (1) Currency in.
- (2) Currency out.
- (3) Door open.
- (4) RAM.
- (5) Low battery.
- (6) Program authentication.
- (7) Reel spin.
- (8) Power reset.

11.10(3) Previous slot machine models. Subject to administrator approval of specific gaming devices, slot machines may be used that do not meet the requirements of subrules 11.10(1) and

11.10(2) but have been certified under previously approved specifications by a commission-designated independent testing facility and maintain a current certification.
[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.11(99F) Slot machine specifications. Rescinded IAB 8/12/09, effective 9/16/09.

491—11.12(99F) Progressive slot machines.

11.12(1) *Meter required.* A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine and that is awarded when a particular configuration of symbols or events is displayed on the slot machine. Random events generating awards independent of the base slot machine game and not dependent on any specific slot machine game shall be considered bonus features. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

11.12(2) *Progressive controllers.* The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

11.12(3) *Limits.* A facility may impose a limit on the progressive jackpot payout of a slot machine if the limit imposed is greater than the progressive jackpot payout at the time the limit is imposed. The facility must prominently display a notice informing the public of the limit. No progressive meter may be turned back to a lesser amount unless one of the following circumstances occurs:

- a. The amount shown on the progressive meter is paid to a player as a jackpot.
- b. It is necessary to adjust the progressive meter to prevent it from displaying an amount greater than the limit imposed by the facility.
- c. It is necessary to change the progressive indicator because of game malfunction.

11.12(4) *Transfer of jackpots.* In the event of malfunction, replacement, or other reason approved by the commission, a progressive jackpot that is removed shall be transferred, less the reset value, to other progressive slot machine jackpots of similar progressive wager and probability at the same facility within 30 days from the removal date. In the event a similar progressive jackpot at the same facility is unavailable, other transfers shall be allowed. A commission representative shall be notified in writing prior to a removal or transfer.

11.12(5) *Records required.* Records must be maintained that record the amount shown on a progressive jackpot meter. Supporting documents must be maintained to explain any reduction in the payoff amount from a previous entry. The records and documents must be retained for a period of three years unless permission to destroy them earlier is given in writing by the administrator.

11.12(6) *Transfer of progressive slot machines.* A progressive slot machine, upon permission of the administrator, may be moved to a different facility if a bankruptcy, loss of license, or other good cause warrants.

11.12(7) *Linked machines.* Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The probability of winning the progressive jackpot multiplied by the maximum amount wagered shall be within the maximum allowable tolerance for all games on the link. For the purpose of this calculation, the maximum allowable tolerance when linked with any other game shall be the product of the probability of winning the progressive jackpot, adjusted for amount wagered, multiplied by:

- a. 1 percent (0.01) for games where the probability of winning the progressive jackpot is less frequent than or equal to 1 in 100,000; or
- b. 5 percent (0.05) for games where the probability of winning the progressive jackpot is more frequent than 1 in 100,000.

11.12(8) *Wide area progressive systems.* A wide area progressive system is a method of linking progressive slot machines or electronic gaming machines by secured data communication as part of a network that connects participating facilities. The purpose of a wide area progressive system is to offer a common progressive jackpot (system jackpot) at all participating locations within Iowa or in multiple

states. The operation of a wide area progressive system (multilink) is permitted, subject to the following conditions:

a. The provider of a multilink (provider) shall be an entity licensed as a manufacturer, a distributor, or an operator of gambling games within the state of Iowa or be the qualified parent company of an operator of gambling games within the state of Iowa. No entity shall be licensed for the sole purpose of providing a multilink.

b. Prior to operation of a multilink, the provider shall submit to the administrator for review and approval information sufficient to determine the integrity and security of the multilink. The information must include, but is not limited to, the following:

- (1) Central system site location, specifications, and operational procedures.
- (2) Encryption and method of secured communication over the multilink and between facilities.
- (3) Method and process for obtaining meter data from slot machines on the multilink.
- (4) Disbursement options for jackpot payoffs, including information for periodic payments.

Periodic payment information, including number of payments and time between payments must be displayed as part of the slot machine pay table or prominently displayed on the face of the slot machine.

(5) Jackpot contribution rates, including information sufficient to determine contributions to the jackpot are consistent across all entities participating in the multilink. Any subsequent changes to the contribution rate of a multilink jackpot must be submitted to the administrator for review and approval.

(6) Jackpot verification procedures.

(7) Jackpot discontinuation procedures, including procedures for distribution of contributions to another jackpot or return of pro rata shares to participating facilities.

c. The provider of the multilink shall, upon request, supply reports and information to the administrator which detail the contributions and economic activity of the system, subject to the following requirements:

(1) Aggregate and detail reports that show both the economic activity of the entire multilink, as well as details of each machine on the multilink.

(2) Upon invoicing a facility, details regarding each machine at the facility and each machine's contribution to the multilink for the period of the invoice shall be supplied, as well as any other details required by the administrator.

d. Concurrent jackpots which occur before the multilink jackpot meters show reset and updated jackpot amounts will be deemed to have occurred simultaneously. Each winner shall receive the full amount shown on the system jackpot meter.

e. The provider must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

f. A meter that shows the amount of the system jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. Jackpot meters may show amounts that differ from the actual system jackpot, due to delays in communication between sites and the central system, but meters shall not display an incorrect amount for an awarded jackpot.

g. In calculating adjusted gross receipts, a facility may deduct its pro rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records supplied by the provider. A facility's pro rata share is based on the amount of coin-in from that facility's machines on the multilink, compared to the total amount of coin-in on the whole system for the time period between awarded jackpots.

h. In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

i. The payment of any system jackpot offered on a multilink shall be administered by the provider, and the provider shall have sole liability for payment of any system jackpot the provider administers.

j. The provider shall comply with the following:

(1) A reserve shall be established and maintained by the provider in an amount of not less than the sum of the following amounts:

1. The present value of the amount currently reflected on the jackpot meters of the multilink.
 2. The present value of one additional reset (start amount) of the multilink.
- (2) For system jackpots disbursed in periodic payments, a provider shall fund the periodic payments within 90 days of the notice of the jackpot award with:
1. Purchase of a qualified investment. A copy of such qualified investment shall be provided to the administrator within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment and shall have a maturity date prior to the date the periodic jackpot payment is required to be made; or
 2. A surety bond or an irrevocable letter of credit with an independent financial institution which provides periodic payments to a winner should the establishment default for any reason. The written agreement establishing a surety bond or irrevocable letter of credit shall be submitted to the administrator within 30 days of purchase; or
 3. An irrevocable trust with an independent financial institution in accordance with a written trust agreement approved by the administrator which provides periodic payments from an unallocated pool of assets to a group of winners and which shall expressly prohibit the winner from encumbering, assigning or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to the winner's estate. The assets of the trust shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments as required; or
 4. Another irrevocable method of providing the periodic payments to a winning player consistent with the purpose of this subparagraph, and which is approved by the administrator prior to implementation.
- (3) The provider shall not be permitted to sell, trade, or otherwise dispose of any periodic payment funding unless approval to do so is first obtained from the administrator.
- (4) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph 11.12(8)“j”(1) above, or in the event of nonpayment of a periodic payment directly by the provider, the provider must immediately notify the administrator. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the provider to be unable to fulfill, or which may otherwise impair the provider's ability to satisfy, the provider's jackpot payment obligations.
- (5) On a quarterly basis, the provider must deliver to the administrator a calculation of system reserves required under subparagraph 11.12(8)“j”(1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the provider, on a form prescribed by the administrator, validating the calculation.
- (6) On an annual basis, the provider must deliver to the administrator updated information sufficient to determine compliance with the funding requirements of all outstanding periodic payments. This shall include an updated listing of all winners showing outstanding periodic payment amounts and any updates to funding documents and agreements. The updated information shall come with a certification of compliance signed by a duly authorized financial officer of the provider.
- (7) The reserve required under subparagraph 11.12(8)“j”(1) must be examined by an independent certified public accountant according to procedures approved by the administrator. Two copies of the report must be submitted to the administrator within 90 days after the conclusion of the provider's fiscal year.
- (8) The administrator may require additional information or audits at any time to ensure compliance with this paragraph.
- k. For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a “qualified prize option,” as that term is defined in Section 451(h) of the Internal Revenue Code. The provider shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the provider shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

l. Multilinks to be offered in conjunction with jurisdictions in other states within the United States are permitted. Multistate multilinks are subject to the requirements of this subrule; in addition, any multistate plans or controls are subject to administrator review and approval.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling.

11.13(1) *Impact on gambling.* In considering whether a manufacturer or distributor applicant will be licensed or a specific product will be distributed, the administrator shall give due consideration to the economic impact of the applicant's product, the willingness of a licensed facility to offer the product to the public, and whether its revenue potential warrants the investigative time and effort required to maintain effective control over the product.

11.13(2) *Licensing standards.* Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees; integrity of financial backers; and any effect on the Iowa economy.

11.13(3) *Application procedure.* Application for a manufacturer's or a distributor's license shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of licensees.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph (1) above.

b. Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

c. A bank or cashier's check made payable to the Iowa Racing and Gaming Commission for the annual license fee as follows:

(1) A manufacturer's license shall be \$250.

(2) A distributor's license shall be \$1,000.

d. A copy of each of the following:

(1) Articles of incorporation and certificate of incorporation, if the business entity is a corporation.

(2) Partnership agreement, if the business entity is a partnership.

(3) Trust agreement, if the business entity is a trust.

(4) Joint venture agreement, if the business entity is a joint venture.

(5) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

e. A copy of each of the following types of proposed distribution agreements, where applicable:

(1) Purchase agreement(s).

- (2) Lease agreement(s).
- (3) Bill(s) of sale.
- (4) Participation agreement(s).

f. Supplementary information. Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the information requested within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

g. Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

h. The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

i. Disclosure. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

j. Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

11.13(4) Temporary license certificates.

a. A temporary license certificate may be issued at the discretion of the administrator.

b. Temporary licenses—period valid. Any certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue.

Failure to obtain a permanent license within the designated time may result in revocation of the license eligibility, fine, or suspension.

11.13(5) Withdrawal of application. A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

11.13(6) Record keeping.

a. *Record storage required.* Distributors and manufacturers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees under these regulations.

b. *Record retention.* The records listed in 11.13(6)“a” shall be retained as required by 491—subrule 5.4(14).

11.13(7) Violation of laws or regulations. Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above.

11.13(8) *Consent to inspections, searches, and seizures.* Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches, and seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

These rules are intended to implement Iowa Code chapter 99F.

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CHAPTER 12
ACCOUNTING AND CASH CONTROL

491—12.1(99F) Definitions.

“Casino” means all areas of a facility where gaming is conducted.

“Coin” means tokens, nickels, and quarters of legal tender.

“Commission” means the racing and gaming commission.

“Container” means:

1. A box attached to a gaming table in which shall be deposited all currency in exchange for gaming chips, fill and credit slips, requests for fill forms, and table inventory forms.

2. A canister in a slot machine cabinet in which currency is retained by slot machines and not used to make change or automatic jackpot payouts.

“Count room” means an area in the facility where contents of containers are counted and recorded.

“Currency” means any coin or paper money of legal tender and paper forms of cashless wagering.

“Drop” means removing the containers from the casino to the count room.

“Facility” means an entity licensed by the commission to conduct gaming operations in Iowa.

“Hopper” means a payout reserve container in which coins are retained by a slot machine to automatically pay jackpots.

“Internal controls” means the facility’s system of internal controls.

“Request” means a request for credit slip, request for fill slip, or request for jackpot payout slip.

“Slip” means a credit slip, fill slip, or jackpot payout slip.

“Slot machine” means a mechanical or electronic gambling game device into which a player may deposit currency or other forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.2(99F) Accounting records.

12.2(1) Each facility shall maintain complete and accurate records of all transactions pertaining to revenues and costs.

12.2(2) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on an accrual basis.

12.2(3) Detailed, supporting, and subsidiary records shall be maintained. The records shall include, but are not limited to:

- a. Statistical game records by gaming day to reflect drop and win amounts by table for each game.
- b. Records of all investments, advances, loans, and receivable balances due the facility.
- c. Records related to investments in property and equipment.
- d. Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages; and differences between theoretical and actual win amounts and percentages for each slot machine on a week-to-date, month-to-date, and year-to-date basis.
- e. Records of all loans and other amounts payable by the facility.
- f. Records that identify the purchase, receipt, and disposal of gaming chips and tokens. All methods of disposal are subject to administrator approval.

12.2(4) Whenever forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, irreconcilable gambling revenue exceptions shall be reported immediately and in writing to the commission. All other exceptions shall be recorded in a log, accessible to commission representatives, maintained according to the requirements in 491—subrule 5.4(14).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—12.3(99F) Facility internal controls.

12.3(1) Each facility shall submit a description of internal controls to the commission. The submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator. The submission shall include and provide for the following:

a. Administrative control that includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's levels of authorization of transactions.

b. Accounting control that includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records. The accounting control shall be designed to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general and specific authorization, which shall be consistent with the requirements of this chapter.

(2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

(3) Access to assets is permitted only in accordance with management authorization, which shall be consistent with the requirements of this chapter.

(4) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

c. Competent personnel with integrity and an understanding of prescribed internal controls.

d. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

e. Surveillance internal controls that include:

(1) Surveillance departments that shall be operated in an autonomous fashion, as separate and distinct entities from all other departments. A gaming facility's organizational structure shall place the director of the surveillance department directly under the span of control and authority of the operator's board of directors or appropriate parent company executive where practical. Under no circumstances will the director of surveillance report to or take direction from any authority at a level below the general manager.

(2) Administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator.

f. Game control, including but not limited to procedures for the storage, removal and record of implements of gambling. The gaming control shall be designed to document:

(1) Access to implements of gambling not in use.

(2) Method for removal of implements of gambling from an active gambling game.

(3) Procedures governing the record of total inventory of implements of gambling, documenting both additions to and removal from storage and active use.

g. Preverified card control, for use with cards approved pursuant to 491—subrule 11.7(9). Controls shall be designed to document:

(1) The procedure governing inspection of the packaging when the cards are put into use on a live table game, including verification of the tamper-evident seal and review of the manufacturer-generated receipt for relevant details.

(2) The procedure for employee breaking of the tamper-evident seal to sign the receipt with name, time the package is being placed in use, and specific table where the package is being used.

(3) The procedure and period to retain the receipt and the details of use. The period of retention must correspond with records maintained by the manufacturer of the cards in accordance with the process submitted pursuant to 491—paragraph 11.7(9)“b.”

(4) Any additional procedures that will be used to verify or randomize preverified cards prior to play.

12.3(2) A commission representative shall review each submission required by subrule 12.3(1) and determine whether it conforms to the requirements of Iowa Code chapter 99F and is consistent with the intent of this chapter and whether the internal controls submitted provide adequate and effective control for the operations of the facility. If the commission representative finds any insufficiencies, the

insufficiencies shall be specified in writing to the facility, which shall make appropriate alterations. No facility shall commence gaming operations unless and until the internal controls are approved.

12.3(3) Each facility shall submit to the commission any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by a commission representative. The proposed changes shall be submitted to the commission and the changes may be approved or disapproved by the commission representative. No facility shall alter its internal controls until the changes are approved.

12.3(4) It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with all internal controls.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19]

491—12.4(99F) Accounting controls within the cashier's cage.

12.4(1) The assets for which the cashiers are responsible shall be maintained on an imprest basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier's count sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory.

12.4(2) At the conclusion of gaming activity each gaming day, a copy of the cashiers' count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories; agreement of amounts thereon to other forms, records, and documents required by this chapter; and the recording of all transactions.

12.4(3) Each facility shall place on file with the commission the names of all persons authorized to enter the cashier's cage and persons who possess the combination or keys to the locks securing the entrance to the cage.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 3608C, IAB 1/31/18, effective 3/7/18]

491—12.5(99F) Gaming table container. Each gaming table in a casino shall have attached to it a container.

12.5(1) Each container shall have:

a. A lock securing the contents of the container, the key to which shall be logged out by the count team.

b. A separate lock securing the container to the gaming table, the key to which shall be different from the key in paragraph 12.5(1) "a" and shall be logged out by the drop team, count team, or emergency drop personnel pursuant to subrule 12.13(1).

c. A slot opening through which currency, forms, records, and documents can be inserted.

d. A mechanical device that will close and lock the slot opening upon removal of the container from the gaming table.

12.5(2) Keys referred to in this rule shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—12.6(99F) Accepting currency at gaming tables. Whenever currency is presented by a patron at a gaming table in exchange for gaming chips, the following procedures and requirements shall be observed:

12.6(1) The dealer or boxperson accepting the currency shall spread the currency on the top of the gaming table.

12.6(2) The dealer or boxperson shall verbalize the currency value in a tone of voice necessary to be heard by the patron and the casino supervisor assigned to the gaming table.

12.6(3) The dealer or boxperson shall take the currency from the top of the gaming table and place it into the container immediately after verbalizing the amount.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.7(99F) Procedures for the movement of gaming chips to and from gaming tables.

12.7(1) Slips. Each slip shall be sequentially numbered, shall be simultaneously printed in two or three copies, and shall discharge in the cashier's cage. Casino supervisors or casino clerks shall input data for each slip, and each prepared copy shall contain the following information:

- a. The type of transfer.
- b. The sequentially ordered slip number.
- c. The date and time of preparation.
- d. The total amount of each denomination.
- e. The total amount of all denominations.
- f. The game and table number.

12.7(2) Distribution of chips to a gaming table. On receipt of a slip in the cashier's cage for distribution of gaming chips to a table, the following procedures shall apply:

- a. A cashier shall prepare the gaming chips and sign all copies of the slip attesting to the accuracy of the totals.
- b. A security employee, or other employee authorized by the internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy. One copy of the slip shall remain with the cashier, if applicable, while two copies are transported with the gaming chips to the gaming table.
- c. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall sign all copies of the slip attesting to the accuracy of the fill.
- d. Upon verification and placement of the gaming chips, the employee responsible for transporting the chips to the gaming table shall observe as the dealer or boxperson places one copy of the slip in the container of the gaming table. The employee shall then transport the remaining copy of the slip to the cashier's cage to be maintained and controlled by a cashier.

12.7(3) Removal of chips from a gaming table. On receipt of a slip in the cashier's cage for removal of gaming chips from a table, the following procedures shall apply:

- a. A security employee, or other employee authorized by the internal controls, shall transfer all copies of the slip to the gaming table.
- b. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall prepare the removal and sign all copies of the slip attesting to the accuracy.
- c. The security employee, or other employee authorized by internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy.
- d. One copy of the slip shall be immediately placed in the container of the gaming table from which the gaming chips were removed.
- e. The security employee, or other employee authorized by internal controls, shall transport the chips and the remaining copy of the slip to the cashier's cage.
- f. The cashier shall compare this copy of the slip to the gaming chips received and shall sign the copy attesting to the accuracy. This copy of the slip shall be maintained and controlled by the cashier.

12.7(4) Slip reconciliation. At the end of each gaming day, copies of each of the slips maintained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips obtained by the count team from the gaming table containers. Copies shall also be compared for agreement with the stored data.

12.7(5) Stored data. All information required by subrule 12.7(1) shall be stored in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of a slip.

12.7(6) Manual process. In the event the online monitoring and control system is unavailable, the facility staff shall perform transfers of gaming chips to and from gaming tables using manual requests and slips.

- a. Requests shall be prepared by the casino supervisor or casino clerk. For the distribution of chips to the gaming table, the request shall be signed by the security employee, or other employee authorized by the internal controls, and shall be left with the cashier prior to the transfer of gaming chips and slips required by paragraph 12.7(6) "b." For the removal of chips from the gaming table, the request shall be signed at the gaming table by the security employee, or other employee authorized by the internal

controls, prior to the transfer of gaming chips and slips required by paragraph 12.7(6) “b” and shall be placed in the container when the slip signed by the cashier has been returned to the gaming table.

b. Slips shall be prepared by cashiers in the cage using a three-part serially prenumbered form in a locked dispenser. The dispenser shall discharge two copies of the slip that have been filled out and signed by the cashier and shall retain the third copy in a continuous form in the dispenser. The same procedures shall be followed and the same set of signatures shall be utilized as required by subrules 12.7(2) and 12.7(3).

c. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for gaming chip movements and to replace the stored data used pursuant to subrule 12.7(4). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.7(7) Modifications. Modifications to the procedures described in subrules 12.7(2), 12.7(3), and 12.7(4) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.7(8) Voided transactions. Whenever it becomes necessary to void a slip, all copies shall be clearly marked “void” and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.7(2), 12.7(3), and 12.7(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 1876C, IAB 2/18/15, effective 3/25/15]

491—12.8(99F) Dropping or opening a gaming table.

12.8(1) The table inventory slips shall be a two-part form, a “closer” and an “opener,” containing the following:

- a. The date and time of preparation.
- b. The game and table number.
- c. The total value of each denomination of gaming chips.
- d. The total value of all denominations of gaming chips.

12.8(2) Whenever a gaming table is dropped or upon initial opening after a drop, the gaming chips at the gaming table shall be counted by the dealer or boxperson assigned to the gaming table while observed by a casino supervisor assigned to the gaming table.

12.8(3) Signatures attesting to the accuracy of the information recorded on the table inventory slips at the time of dropping or opening of the gaming tables shall be of the dealer or boxperson and the casino supervisor assigned to the gaming table who observed the dealer or boxperson count the contents of the table inventory.

12.8(4) Upon meeting the signature requirements described in subrule 12.8(3):

- a. The closer, at dropping, shall be deposited in the container immediately prior to the closing of the table. The opener and the gaming chips remaining at the table shall be placed in a secured, locked area on the table.
- b. The opener, at opening, shall be immediately deposited in the container.

12.8(5) Upon opening a gaming table, if the totals on the gaming inventory form vary from the opening count, the casino supervisor shall fill out an error notification slip. The casino supervisor and dealer or boxperson shall sign the error notification slip and deposit the slip in the container.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.9(99F) Slot machine container and key. Each slot machine shall have a container(s) that is housed in a locked compartment(s) separate from any other compartment of the slot machine.

12.9(1) Each container shall:

- a. Have a lock securing the contents of the container, the key to which shall be logged out by the count team or employees authorized by the internal controls to address container malfunction issues.
- b. Have a lock to each compartment securing the container to the slot machine, the key to which shall be different from the key in paragraph 12.9(1) “a” and shall be logged out by the drop team, employees authorized by the internal controls to address container malfunction issues, or employees transporting container(s) according to rule 491—12.13(99F).

c. Be identified at the time of removal by a number corresponding to the number of the slot machine from which the container is removed.

12.9(2) Keys referred to in subrule 12.9(1) shall be maintained and controlled by the security department in a secured area. The facility shall establish a log-out procedure for all keys removed from the secured area.

12.9(3) Other keys to each slot machine or any device connected thereto which may affect the operation of the slot machine shall be maintained in a secure place and controlled by the slot department. [ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—12.10(99F) Procedures for hopper fills and attendant payouts.

12.10(1) Slips. Each slip shall be sequentially numbered, and two copies shall be simultaneously printed. An employee authorized by the internal controls shall input data for each slip, and each prepared copy shall contain the following information:

- a. The type of transaction.
- b. The sequentially ordered slip number.
- c. The date and time of preparation.
- d. For attendant payouts, the amount to be paid and the cage location from which the amount is to be paid.
- e. For jackpots, the winning combination to be paid.
- f. For hopper fills, the denomination and amount of currency to be distributed.

12.10(2) Hopper fills. A slip shall be prepared by a person authorized by the internal controls whenever a slot machine fill is required. On receipt or preparation of a slip in the cashier's cage, the following procedures shall apply:

- a. The cashier, upon providing the coins to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.
- b. The employee authorized by the internal controls, upon receipt of the coins, shall sign all copies of the slip and transport the coins and one copy of the slip to the slot machine. The remaining copy shall remain with the cashier.
- c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(2) "a" and 12.10(2) "b," shall observe the deposit of the coins into the slot machine hopper and the closing and locking of the slot machine door. This employee shall then sign the copy of the slip at the slot machine.
- d. Upon completion of the fill, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

12.10(3) Attendant payouts. Whenever a patron wins a jackpot or has accumulated credits not totally and automatically paid directly from a slot machine, a slip shall be prepared by a person authorized by the internal controls. On receipt or preparation of a slip for an attendant payout in the cashier's cage, the following procedures shall apply:

- a. The cashier, upon providing the payment to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.
- b. The employee authorized by the internal controls, upon receipt of the payment, shall sign all copies of the slip and transport the payment and one copy of the slip to the slot machine. The remaining copy of the slip shall remain with the cashier.
- c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(3) "a" and 12.10(3) "b," shall observe the payment of the patron. For jackpots, the employee shall verify the symbols on the slot machine. For jackpots in excess of \$10,000, the employee shall be a supervisor or higher authority. In either case, the employee shall then sign the copy of the slip at the slot machine.
- d. Upon completion of the payout, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

e. For a slot machine jackpot in excess of \$100,000, a facility shall notify a commission representative in accordance with the immediate notification process established by 491—subrule 5.4(5).

12.10(4) Overrides. System overrides shall be authorized by a slot supervisor or an employee authorized by the internal controls. This employee shall not perform the duties and signature requirements of subrules 12.10(2) and 12.10(3) in any transaction where the employee authorizes a system override. In addition to the signature requirements of subrules 12.10(2) and 12.10(3), the signature of the authorizing employee shall be on all copies of the slip.

12.10(5) Slip reconciliation. At the end of each gaming day, copies of the slip retained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips deposited in the area controlled by the accounting department and for recording on the slot win sheet. Copies shall also be compared for agreement with the stored data.

12.10(6) Stored data. All information required by subrule 12.10(1) shall be stored in the online monitoring and control system in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of the slip.

12.10(7) Modifications. Modifications to the procedures described in subrules 12.10(2) to 12.10(5) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.10(8) Manual process. In the event the online monitoring and control system is unavailable, the facility staff shall perform hopper fills and manual payouts using manual slips. Manual slips shall be three-part serially prenumbered forms. For use of manual slips, the following shall apply:

a. Slips shall be placed in a locked dispenser. Once prepared, the dispenser shall discharge two copies of the slip, while retaining the third copy in a continuous form. They shall be prepared in the cashier's cage at the request of an employee authorized by the internal controls. Procedures for the two dispensed copies shall follow subrules 12.10(2) and 12.10(3).

b. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for hopper fills or manual payouts and to replace the stored data used pursuant to subrule 12.10(5). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.10(9) Voided transactions. Whenever it becomes necessary to void a slip, all the copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.10(2) to 12.10(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.11(99F) Attendant and ticket payout accounting.

12.11(1) Attendant payouts. Under this rule, unless otherwise subject to Iowa Code chapter 556, jackpots and accumulated credits paid by a slip that are unpaid or unclaimed at the close of a facility's fiscal year shall be disallowed as a deduction from gross receipts for the calculation of adjusted gross revenue for the wagering tax. A facility shall make this adjustment to revenue within 90 days of the close of the facility's fiscal year.

12.11(2) Ticket payouts. Payouts dispensed by a ticket issued directly from a gaming device must have a minimum payout redemption period of 90 days from the date of issuance.

a. Notwithstanding 491—subrule 5.4(14), an issued ticket redeemed for cash or deposited in a slot machine for machine credits shall be retained for a minimum of 90 days from the redemption date. The ticket may be subsequently destroyed if record of the transaction is retrievable by other means.

b. At the close of the facility's fiscal year, tickets issued in previous fiscal years and tickets with expired redemption periods that remain outstanding and unredeemed are subject to the requirements of subrule 12.11(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.12(99F) Computer recording requirements and monitoring of slot machines.

12.12(1) A facility shall have an online monitoring and control system connected to each slot machine in the casino to record and monitor the slot machine's activities.

12.12(2) The online monitoring and control system shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

- a. Record the number and total of currency placed in the slot machine for the purpose of activating play.
- b. Record the number and total of currency in the container(s).
- c. Record the number and total of currency to be paid manually as the result of a jackpot.
- d. Record the electronic meter information required by 491—paragraph 11.10(2) "c."

12.12(3) The online monitoring and control system shall monitor and detect machine exception codes and error messages as required by 491—paragraph 11.10(2) "d."

12.12(4) The online monitoring and control system shall store in machine-readable form all information required by subrules 12.12(2) and 12.12(3), and the stored data shall not be susceptible to change or removal.

12.12(5) The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the online monitoring and control system that affect any part of the system's message digest. These changes and updates shall be approved as required by 491—subrule 11.4(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—12.13(99F) Transportation of containers.

12.13(1) Each facility shall place on file with a commission representative a schedule setting forth the specific times at which the containers will be brought to or removed from the gaming tables or slot machines for transport to the count room. An emergency drop that deviates from the schedule shall be permissible for instances of full containers or container malfunctions provided that representatives from the security department and another department conduct the drop and the process is recorded by the surveillance department from the time of machine entry until the container is secured in the count room or other approved secure location. The commission representative shall be notified after each occurrence.

12.13(2) A security employee shall accompany and observe the drop team. For table games, all containers removed from the gaming tables shall be transported by a security employee and a table game supervisor.

12.13(3) All containers removed from slot machine cabinets shall:

- a. Be removed by a drop team wearing uniforms or outer garments as required by subrule 12.15(2).
- b. Be replaced immediately with an empty container that shall be secured in the cabinet.

12.13(4) All containers removed shall be transported directly to, and secured in, the count room or in a secure area within the facility until the containers can be transferred to the count room.

12.13(5) Empty containers not secured to the gaming tables or slot machine compartment shall be stored in the count room or an approved secured location. Empty containers may be removed from the count room or secured area for repair or destruction provided the surveillance department is notified and the inside of the container is held up to the full view of a closed circuit television camera prior to removal.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

491—12.14(99F) Count room—characteristics.

12.14(1) Each facility shall have a count room that shall:

- a. Be designed and constructed to provide maximum security for materials housed within and the activities conducted therein.
- b. Have an alarm device connected to the entrance of the room that causes a signaling to the monitors of the closed circuit surveillance system and to the commission representative's office whenever the door to the room is opened.
- c. Have, if currency is counted within the count room, a count table constructed of clear glass or similar material for the emptying, counting, and recording of the contents of containers.

12.14(2) All room keys shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.15(99F) Opening, counting, and recording contents of containers in the count room.

12.15(1) Each facility shall file with a commission representative the specific times and procedures for opening, counting, and recording the contents of containers.

12.15(2) All persons present in the count room during the counting process, unless expressly exempted by a commission representative, shall wear a full-length, one-piece, pocketless outer garment with openings only for the arms, feet, and neck that extends over any other garments and covers the tops of any footwear.

12.15(3) Persons shall not:

- a.* Carry a pocketbook or other container into the count room, unless it is transparent.
- b.* Remove their hands from or return them to a position on or above the count table unless the backs and palms of the hands are first held straight out and exposed to the view of other members of the count team and the closed circuit surveillance camera.

12.15(4) Requirements for conducting the count.

a. Immediately prior to the commencement of the count, the count team shall notify the person assigned to the surveillance room that the count is about to begin, after which the surveillance department shall make a video recording with the time and date inserted thereon of the entire counting process.

b. Prior to counting the contents of the containers, the doors to the count room shall be locked and no person shall be permitted to enter or leave the count room, except during an emergency or on scheduled breaks, until the entire counting, recording, and verification process is completed. During this time, a commission representative shall have unrestricted access.

c. When a container is placed on a count table or coin scale, the count team shall ensure that the table or machine number associated with a container is identified to the surveillance department.

d. A machine may be used to automatically count the contents of a container.

e. The contents of each container shall be emptied on the count table or coin scale and either manually counted separately on the count table or counted in an approved currency counting machine located in a conspicuous location on, near, or adjacent to the count table or coin scale. These procedures shall at all times be conducted in full view of the closed circuit surveillance cameras located in the count room.

f. Immediately after the contents of a container are emptied onto the count table or coin scale, the inside of the container shall be held up to the full view of a closed circuit surveillance camera and shall be shown to at least one other count team member to ensure all contents of the container have been removed and, if applicable, the container shall then be locked. By the end of the count process, empty containers shall be secured in a container cart or an area separate from uncounted containers.

g. If the original count is being performed by a machine that automatically counts and records the amounts of the contents of each individual container, an aggregate count may be permitted in substitution of a second container count.

h. For manually counted containers:

(1) The count team members shall place the contents of each container into separate stacks on the count table by denomination of currency and by type of form, record, or document, except that a machine may be used to automatically sort currency by denomination.

(2) Each denomination of currency shall be counted separately by one count team member who shall group currency of the same denomination on the count table in full view of a closed circuit surveillance camera. The currency shall then be counted by a second count team member who is unaware of the result of the original count. The second count team member, after completing this count, shall confirm the accuracy of the total, either orally or in writing, with that reached by the first count team member.

12.15(5) Table games.

a. As the contents of each container from a table game are counted, one count team member shall record the following information by game, table number, date, and time on a master game report or supporting documents:

- (1) The amount of each denomination of currency.
- (2) The amount of all denominations of currency.

- (3) The total amounts of currency.
- (4) The total amount of gaming chips.
- (5) The amount of the opener.
- (6) The amount of the closer.
- (7) The serial number and amount of each fill.
- (8) The amount of all fills.
- (9) The serial number and amount of each credit.
- (10) The amount of all credits.
- (11) The win or loss.

b. After the contents of each container are counted and recorded, one member of the count team shall record by game on the master game report the total amounts of currency, table inventory slips, fills, credits, and win or loss together with any other required information.

c. Notwithstanding the requirements of paragraphs 12.15(5) “*a*” and “*b*,” if the internal controls allow for the recording of fills, credits, and table inventory slips on the master game report or supporting documents prior to commencement of the count, a count team member shall compare for agreement the totals of the amounts recorded thereon to the fills, credits, and table inventory slips removed from the containers.

d. After preparation of the master game report, each count team member shall sign the report attesting to the accuracy of the information contained thereon.

e. Currency and gaming chips shall not be removed from the count room after commencement of the count until the total has been verified and accepted by a cashier. At the conclusion of the count, all currency and gaming chips removed from the containers shall be counted by a cashier in the presence of a count team member prior to having access to the information recorded on the master game report. The cashier shall attest to the accuracy of the amount received from the gaming tables by signature on the master game report, after which a count team member shall sign the master game report evidencing the fact that both the cashier and count team have agreed on the total counted. The verified funds shall then remain in the custody of the cashier.

f. After the master game report has been signed, the requests, slips, and table inventory slips removed from the containers shall be attached. The report, with attachments, shall then be transported directly to the accounting department or shall be maintained in locked storage until the master game report can be delivered to the accounting department. Upon meeting the signature requirements described in paragraph 12.15(5) “*e*,” the report shall not be available to any cashier’s cage personnel.

g. Unless the internal controls provide for the forwarding of the original requests and original slips from the cashier’s cage directly to the accounting department, the original requests and original slips recorded or to be recorded on the master game report shall be transported from the count room directly to the accounting department.

h. The originals and copies of the master game report, requests, slips, table inventory slips, and the test receipts from the currency counting equipment shall, on a gaming day basis in the accounting department, be:

(1) Compared for agreement with each other on a test basis if the originals are received from the count room by persons with no recording responsibilities and, if applicable, to copies remaining in the dispenser or stored data.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by the accounting department as a permanent accounting record.

12.15(6) Slot machines.

a. Currency shall not be removed from the count room after commencement of the count until the currency total has been verified and accepted by a cashier. At the conclusion of the count, all currency removed from the containers shall be counted by a cashier in the presence of a count team member prior to the recording of information on the slot drop sheet. The cashier shall attest to the accuracy of the

amount of currency received from the slot machines by signature on the slot drop sheet, after which a count team member shall sign the slot drop sheet evidencing the fact that both the cashier and count team have agreed on the total amount of currency counted. The verified funds shall remain in the custody of the cashier.

b. The slot drop sheet and supporting documents shall be transported directly to the accounting department and shall not be available, except for signing, to any cashier's cage or slot personnel or shall be maintained in locked storage until they can be delivered to the accounting department.

c. The preparation of the slot drop sheet shall be completed by accounting employees as follows:

(1) Compare the amount of currency counted and the drop meter reading for agreement for each slot machine.

(2) Record the hopper fills for each slot machine.

(3) Record for each slot machine the payouts and compare for agreement the payouts to the manual jackpot meter reading recorded on the slot meter sheet.

(4) Calculate and record the win or loss for each slot machine.

(5) Explain and report for corrections of apparent meter malfunctions to the slot department all significant differences between meter readings and amounts recorded.

(6) Calculate statistics by slot machine.

d. The slot drop sheet, the slot meter sheet, payouts, and hopper fills shall be:

(1) Compared for agreement with each other and to copies or stored data on a test basis.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by accounting department employees.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

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CHAPTER 13
STANDARDS OF PRACTICE AND PRINCIPLES OF MEDICAL ETHICS

[Prior to 5/4/88, see 470—135.251 to 470—135.402]

653—13.1(148,272C) Standards of practice—packaging, labeling and records of prescription drugs dispensed by a physician.

13.1(1) A physician shall dispense a prescription drug only in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471-1476 (2001), unless otherwise requested by the patient, and of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. ss. 301 et seq. (2001).

13.1(2) A label shall be affixed to a container in which a prescription drug is dispensed by a physician which shall include:

1. The name and address of the physician.
2. The name of the patient.
3. The date dispensed.
4. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician.
5. The name and strength of the prescription drug in the container.

13.1(3) The provisions of subrules 13.1(1) and 13.1(2) shall not apply to packaged drug samples.

13.1(4) A physician shall keep a record of all prescription drugs dispensed by the physician to a patient which shall contain the information required by subrule 13.1(2) to be included on the label. Noting such information on the patient's chart or record maintained by the physician is sufficient.

This rule is intended to implement Iowa Code sections 147.55, 148.6, 272C.3 and 272C.4.

653—13.2(148,272C) Standards of practice—appropriate pain management. This rule establishes standards of practice for the management of acute and chronic pain. The board encourages the use of adjunct therapies such as acupuncture, physical therapy and massage in the treatment of acute and chronic pain. This rule focuses on prescribing and administering controlled substances to provide relief and eliminate suffering for patients with acute or chronic pain.

1. This rule is intended to encourage appropriate pain management, including the use of controlled substances for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.

2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.

3. The board recognizes that pain management, including the use of controlled substances, is an important part of general medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.

4. Physicians should not fear board action for treating pain with controlled substances as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.

5. The board recognizes that the undertreatment of pain is a serious public health problem that results in decreases in patients' functional status and quality of life, and that adequate access by patients to proper pain treatment is an important objective of any pain management policy.

6. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.

13.2(1) Definitions. For the purposes of this rule, the following terms are defined as follows:

“Acute pain” means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

“Addiction” means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

“Chronic pain” means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain.

“Pain” means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

“Physical dependence” means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

“Pseudoaddiction” means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

“Substance abuse” means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

“Tolerance” means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

“Undertreatment of pain” means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

13.2(2) *Laws and regulations governing controlled substances.* Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations governing controlled substances.

13.2(3) *Undertreatment of pain.* The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use controlled substances for terminal pain due to the physician’s concern with addicting the patient, or a failure to use an adequate level of pain management.

13.2(4) *Assessment and treatment of acute pain.* Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute pain. Acute pain is not a diagnosis; it is a symptom. Prescribing controlled substances for the treatment of acute pain should be based on clearly diagnosed and documented pain. Appropriate management of acute pain should include an assessment of the mechanism, type and intensity of pain. The patient’s medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

13.2(5) *Effective management of chronic pain.* Prescribing controlled substances for the treatment of chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain. To ensure that chronic pain is properly assessed and treated, a physician who prescribes or administers controlled substances to a

patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

a. Patient evaluation. A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for controlled substances from a single physician and a single pharmacy whenever possible.

c. Informed consent. The physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

e. Consultation/referral. A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultation may be appropriate. The physician should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

f. Documentation. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

g. Pain management agreements. A physician who treats patients for chronic pain with controlled substances shall consider using a pain management agreement with each patient being treated that specifies the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with controlled substances. A physician who

prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. A sample pain management agreement and prescription drug risk assessment tools may be found on the board's website at www.medicalboard.iowa.gov.

h. Substance abuse history or comorbid psychiatric disorder. A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

i. Drug testing. A physician who prescribes controlled substances to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.

j. Termination of care. The physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse.

13.2(6) Pain management for terminal illness. The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of opiates or controlled substances to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

13.2(7) Prescription monitoring program. The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. The board recommends that physicians utilize the prescription monitoring program when prescribing controlled substances to patients if the physician has reason to believe that a patient is at risk of drug abuse or diversion. A link to the prescription monitoring program may be found at the board's website at www.medicalboard.iowa.gov.

13.2(8) Pain management resources. The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain. This list is provided for the convenience of licensees, and the publications included are not intended to be incorporated in the rule by reference.

a. American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

b. American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

c. American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

d. DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing

guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

e. Interagency Guideline on Prescribing Opioids for Pain. Developed by the Washington State Agency Medical Directors' Group in collaboration with an expert advisory panel, actively practicing providers and public stakeholders, the guideline focuses on evidence-based treatment for chronic-pain patients. The guideline was published in 2007 and updated in 2015.

f. Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

g. World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.

h. CDC Guideline for Prescribing Opioids for Chronic Pain. On March 15, 2016, the U.S. Centers for Disease Control and Prevention (CDC) issued a guideline to provide recommendations for the prescribing of opioid pain medication for patients 18 years of age and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care.

[ARC 9599B, IAB 7/13/11, effective 8/17/11; ARC 2705C, IAB 9/14/16, effective 10/19/16]

653—13.3(147) Supervision of pharmacists who administer adult immunizations. Rescinded ARC 1033C, IAB 10/2/13, effective 11/6/13.

653—13.4(148) Supervision of pharmacists engaged in collaborative drug therapy management. A supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The physician is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

13.4(1) Definitions.

"Authorized pharmacist" means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy (IBP) as specified in the drug therapy management criteria in 657—8.34(155A).

"Board" means the board of medicine of the state of Iowa.

"Collaborative drug therapy management" means participation by a physician and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a written community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital's clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital's P&T committee.

"Community practice protocol" means a written, executed agreement entered into voluntarily between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 13.4(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

“Hospital pharmacist” means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital’s P&T committee.

“Hospital practice protocol” means a written plan, policy, procedure, or agreement that authorizes drug therapy management between physicians and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all physicians and hospital pharmacists at a hospital or the hospital’s clinics under the direct authority of the hospital’s P&T committee or only to those physicians and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 13.4(3).

“IBP” means the Iowa board of pharmacy.

“P&T committee” means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

“Physician” means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician’s practice.

“Therapeutic interchange” means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

13.4(2) Community practice protocol.

a. A physician shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBP or a committee authorized by the IBP. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

b. The community practice protocol shall include:

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each physician who may prescribe drugs and is responsible for supervising a patient’s drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the patient’s physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient’s physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the physician to secure the patient's written consent. If the physician does not secure the patient's written consent, the pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the physician, including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the physician requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or authorized pharmacist.

(17) A description of the mechanism for the pharmacist and physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's physician and one authorized pharmacist.

d. A collaborative drug therapy management protocol must be filed with the IBP, kept on file in the pharmacy and made available to the board or IBP upon request. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the IBP. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the IBP of changes in the protocol.

f. Patient consent for community practice protocols. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient needs to be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

13.4(3) Hospital practice protocol.

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of physicians and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

This rule is intended to implement Iowa Code chapter 148.

653—13.5(147,148) Standards of practice—chelation therapy. Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147 and 148.

653—13.6(79GA,HF726) Standards of practice—automated dispensing systems. A physician who dispenses prescription drugs via an automated dispensing system or a dispensing system that employs technology may delegate nonjudgmental dispensing functions to staff assistants in the absence of a pharmacist or physician provided that the physician utilizes an internal quality control assurance plan that ensures that the medication dispensed is the medication that was prescribed. The physician shall be physically present to determine the accuracy and completeness of any medication that is reconstituted prior to dispensing.

13.6(1) An internal quality control assurance plan shall include the following elements:

- a. The name of the physician responsible for the internal quality assurance plan and testing;
- b. Methods that the dispensing system employs, e.g., bar coding, to ensure the accuracy of the patient's name and medication, dosage, directions and amount of medication prescribed;
- c. Standards that the physician expects to be met to ensure the accuracy of the dispensing system and the training and qualifications of staff members assigned to dispense via the dispensing system;
- d. The procedures utilized to ensure that the physician(s) dispensing via the automated system provide(s) patients counseling regarding the prescription drugs being dispensed;

- e. Staff training and qualifications for dispensing via the dispensing system;
- f. A list of staff members who meet the qualifications and who are assigned to dispense via the dispensing system;
- g. A plan for testing the dispensing system and each staff member assigned to dispense via the dispensing system;
- h. The results of testing that show compliance with the standards prior to implementation of the dispensing system and prior to approval of each staff member to dispense via the dispensing system;
- i. A plan for interval testing of the accuracy of dispensing, at least annually; and
- j. A plan for addressing inaccuracies, including discontinuing dispensing until the accuracy level can be reattained.

13.6(2) Those dispensing systems already in place shall show evidence of a plan and testing within two months of August 31, 2001.

13.6(3) The internal quality control assurance plan shall be submitted to the board of medicine upon request.

This rule is intended to implement Iowa Code section 147.107 and 2001 Iowa Acts, House File 726, section 5(10), paragraph “i.”

653—13.7(147,148,272C) Standards of practice—office practices.

13.7(1) *Termination of the physician-patient relationship.* A physician may choose whom to serve. Having undertaken the care of a patient, the physician may not neglect the patient. A physician shall provide a patient written notice of the termination of the physician-patient relationship. A physician shall ensure that emergency medical care is available to the patient during the 30-day period following notice of the termination of the physician-patient relationship.

13.7(2) *Patient referrals.* A physician shall not pay or receive compensation for patient referrals.

13.7(3) *Confidentiality.* A physician shall maintain the confidentiality of all patient information obtained in the practice of medicine. Information shall be divulged by the physician when authorized by law or the patient or when required for patient care.

13.7(4) *Sexual conduct.* It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

a. In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient’s parent or guardian if the patient is a minor.

b. A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.

c. A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

d. A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient’s parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

13.7(5) *Disruptive behavior.* A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

13.7(6) *Sexual harassment.* A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker’s performance or creates an intimidating, hostile or offensive work environment.

13.7(7) *Transfer of medical records.* A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient or by a legally designated representative of the subject patient, except as otherwise required or permitted by law.

13.7(8) *Retention of medical records.* The following paragraphs become effective on January 1, 2004.

a. A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.

b. A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for a period consistent with that established by Iowa Code section 614.8.

c. Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:

(1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written request, the records will be sent to the physician or entity of the patient's choice.

653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians. This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

13.8(1) *Definitions.* As used in this rule:

"Alter" means to change the cellular structure of living tissue.

"Capable of" means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

"Damage" means to cause a harmful change in the cellular structure of living tissue.

"Delegate" means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians.

"Medical aesthetic service" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; collagen induction therapy (microneedling); fat-freezing treatment (cool sculpting); botox injections; collagen injections; and tattoo removal.

"Medical director" means a physician who assumes the role of, or holds oneself out as, medical director at a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa. The medical director is ultimately responsible for all medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa.

"Medical spa" means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a

dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

“Nonsuperficial” means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

“Qualified laser technician” means any person, licensed or unlicensed, who has successfully completed a minimum of 120 hours of training, including a minimum of 40 hours of didactic study and 80 hours of clinical training, in the safe and effective use of lasers in the performance of medical aesthetic services at an accredited laser training program. For the purposes of this rule, a qualified laser technician may only use lasers in the performance of delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa. An unlicensed qualified laser technician may not perform any other medical aesthetic services defined in this rule.

“Qualified licensed or certified nonphysician person” means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another health- or skin care-related licensing board in Iowa and is qualified to perform delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa.

“Supervision” means the oversight of qualified licensed or certified nonphysician persons or qualified laser technicians who perform medical aesthetic services delegated by a medical director.

13.8(2) Practice of medicine. The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons or qualified laser technicians if the service has been delegated by a medical director who is responsible for supervision of the services performed at a medical spa in Iowa.

13.8(3) Medical director. A physician who serves as medical director at a medical spa shall:

- a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;
- b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;
- c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and
- e. Be clearly identified as the medical director in all advertising activities, Internet websites and signage related to the medical spa.

13.8(4) Delegated medical aesthetic service. When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians, the service shall be:

- a. Within the medical director’s scope of practice and medical competence to supervise;
- b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

13.8(5) Supervision. A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians is responsible for providing appropriate supervision. The medical director shall:

- a. Ensure that all licensed or certified nonphysician persons or qualified laser technicians are qualified and competent to safely perform each delegated medical aesthetic service by personally assessing the person’s education, training, experience and ability;
- b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person’s license or certification unless the person is supervised by a qualified supervising physician;
- c. Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;

- d.* Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- e.* Be physically located, at all times, within 60 miles of the location where delegated medical aesthetic services are performed;
- f.* Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services, particularly in case of injury or an emergency;
- g.* Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services;
- h.* Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving delegated medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- i.* Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians maintain accurate and timely medical records for the delegated medical aesthetic services they perform;
- j.* Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or certified nonphysician persons or qualified laser technicians and that such informed consent is timely documented in the patient's medical record;
- k.* Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians, and all qualified licensed or certified nonphysician persons or qualified laser technicians are visibly displayed at each medical spa where they perform medical aesthetic services and provided in writing to each patient receiving medical aesthetic services at a medical spa; and
- l.* Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services at a medical spa, within 14 days of a request by the board.

13.8(6) Continuing medical education. All medical directors, qualified licensed or certified nonphysician persons and qualified laser technicians who practice at a medical spa in Iowa shall complete a minimum of 20 hours of continuing medical education in the safe and effective performance of medical aesthetic services each year.

13.8(7) Exceptions. This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

13.8(8) Physician assistants. Nothing in this rule shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

[ARC 9088B, IAB 9/22/10, effective 10/27/10; ARC 4247C, IAB 1/16/19, effective 2/20/19]

653—13.9(147,148,272C) Standards of practice—interventional chronic pain management. This rule establishes standards of practice for the practice of interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

13.9(1) Definition. As used in this rule:

“Interventional chronic pain management” means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain. Interventional techniques include percutaneous (through the skin) needle placement to inject drugs in targeted areas. Interventional techniques also include nerve ablation (excision or amputation) and certain surgical procedures. Interventional techniques often involve injection of steroids, analgesics, and anesthetics and include: lumbar, thoracic, and cervical spine injections, intra-articular injections, intrathecal injections, epidural injections (both regular and transforaminal), facet injections, discography, nerve destruction, occipital nerve blocks, lumbar sympathetic blocks

and vertebroplasty, and kyphoplasty. Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient's chronic pain or when it is used to identify anatomic landmarks during interventional techniques. Specific interventional techniques include: SI joint injections; spinal punctures; epidural blood patches; epidural injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve blocks; axillary nerve blocks; intercostals nerve blocks; multiple intercostals nerve blocks; ilioinguinal nerve blocks; peripheral nerve blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.

13.9(2) *Interventional chronic pain management.* The practice of interventional chronic pain management shall include the following:

- a. Comprehensive assessment of the patient;
- b. Diagnosis of the cause of the patient's pain;
- c. Evaluation of alternative treatment options;
- d. Selection of appropriate treatment options;
- e. Termination of prescribed treatment options when appropriate;
- f. Follow-up care; and
- g. Collaboration with other health care providers.

13.9(3) *Practice of medicine.* Interventional chronic pain management is the practice of medicine.
[ARC 8918B, IAB 6/30/10, effective 8/4/10]

653—13.10(147,148,272C) Standards of practice—physicians who prescribe or administer abortion-inducing drugs.

13.10(1) *Definition.* As used in this rule:

“*Abortion-inducing drug*” means a drug, medicine, mixture, or preparation, when it is prescribed or administered with the intent to terminate the pregnancy of a woman known to be pregnant.

13.10(2) *Physical examination required.* A physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

13.10(3) *Physician's physical presence required.* When inducing an abortion by providing an abortion-inducing drug, a physician must be physically present with the woman at the time the abortion-inducing drug is provided.

13.10(4) *Follow-up appointment required.* If an abortion is induced by an abortion-inducing drug, the physician inducing the abortion must schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided, 12 to 18 days after the woman's use of an abortion-inducing drug to confirm the termination of the pregnancy and evaluate the woman's medical condition. The physician shall use all reasonable efforts to ensure that the woman is aware of the follow-up appointment and that she returns for the appointment.

13.10(5) *Parental notification regarding pregnant minors.* A physician shall not induce an abortion by providing an abortion-inducing drug to a pregnant minor prior to compliance with the requirements of Iowa Code chapter 135L and rules 641—89.12(135L) and 641—89.21(135L) adopted by the public health department.

[ARC 1034C, IAB 10/2/13, effective 11/6/13]

653—13.11(147,148,272C) Standards of practice—telemedicine. This rule establishes standards of practice for the practice of medicine using telemedicine.

1. The board recognizes that technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.

2. Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.

3. The board advises that licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.

4. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

13.11(1) Definitions. As used in this rule:

“Asynchronous store-and-forward transmission” means the collection of a patient’s relevant health information and the subsequent transmission of the data from an originating site to a health care provider at a distant site without the presence of the patient.

“Board” means the Iowa board of medicine.

“In-person encounter” means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

“Licensee” means a medical physician or osteopathic physician licensed by the board.

“Telemedicine” means the practice of medicine using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology. Telemedicine shall not include the provision of medical services only through an audio-only telephone, email messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof.

“Telemedicine technologies” means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.

13.11(2) Practice guidelines. A licensee who uses telemedicine shall utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The board acknowledges that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

13.11(3) Iowa medical license required. A physician who uses telemedicine in the diagnosis and treatment of a patient located in Iowa shall hold an active Iowa medical license consistent with state and federal laws. Nothing in this rule shall be construed to supersede the exceptions to licensure contained in 653—subrule 9.2(2).

13.11(4) Standards of care and professional ethics. A licensee who uses telemedicine shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the board.

13.11(5) Scope of practice. A licensee who uses telemedicine shall ensure that the services provided are consistent with the licensee’s scope of practice, including the licensee’s education, training, experience, ability, licensure, and certification.

13.11(6) Identification of patient and physician. A licensee who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

13.11(7) Physician-patient relationship.

a. A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when:

(1) The person with a health-related matter seeks assistance from a licensee;

- (2) The licensee agrees to undertake diagnosis and treatment of the person; and
- (3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.

b. A valid physician-patient relationship may be established by:

- (1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter;
- (2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient's care; or
- (3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

13.11(8) *Medical history and physical examination.* Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An Internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview, does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a licensee.

13.11(9) *Nonphysician health care providers.* If a licensee who uses telemedicine relies upon or delegates the provision of telemedicine services to a nonphysician health care provider, the licensee shall:

- a.* Ensure that systems are in place to ensure that the nonphysician health care provider is qualified and trained to provide that service within the scope of the nonphysician health care provider's practice;
- b.* Ensure that the licensee is available in person or electronically to consult with the nonphysician health care provider, particularly in the case of injury or an emergency.

13.11(10) *Informed consent.* A licensee who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

13.11(11) *Coordination of care.* A licensee who uses telemedicine shall, when medically appropriate, identify the medical home or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee shall provide a copy of the medical record to the patient's medical home or treating physician(s).

13.11(12) *Follow-up care.* A licensee who uses telemedicine shall have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

13.11(13) *Emergency services.* A licensee who uses telemedicine shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

13.11(14) *Medical records.* A licensee who uses telemedicine shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the

telemedicine encounter. The licensee shall ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner.

13.11(15) *Privacy and security.* A licensee who uses telemedicine shall ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act to ensure that all patient communications and records are secure and remain confidential.

- a.* Written protocols shall be established that address the following:
 - (1) Privacy;
 - (2) Health care personnel who will process messages;
 - (3) Hours of operation;
 - (4) Types of transactions that will be permitted electronically;
 - (5) Required patient information to be included in the communication, including patient name, identification number and type of transaction;
 - (6) Archiving and retrieval; and
 - (7) Quality oversight mechanisms.

- b.* The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols shall include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

13.11(16) *Technology and equipment.* The board recognizes that three broad categories of telemedicine technologies currently exist, including asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services. While some telemedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telemedicine shall comply with the following requirements:

- a.* The technology and equipment utilized in the provision of telemedicine services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

- b.* The technology and equipment utilized in the provision of telemedicine services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and

- c.* The technology and equipment utilized in the provision of telemedicine services must be compliant with the Health Insurance Portability and Accountability Act.

13.11(17) *Disclosure and functionality of telemedicine services.* A licensee who uses telemedicine shall ensure that the following information is clearly disclosed to the patient:

- a.* Types of services provided;
- b.* Contact information for the licensee;
- c.* Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;
- d.* Limitations in the drugs and services that can be provided via telemedicine;
- e.* Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;
- f.* Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);
- g.* Appropriate uses and limitations of the technologies, including in emergency situations;
- h.* Uses of and response times for emails, electronic messages and other communications transmitted via telemedicine technologies;
- i.* To whom patient health information may be disclosed and for what purpose;
- j.* Rights of patients with respect to patient health information; and
- k.* Information collected and passive tracking mechanisms utilized.

13.11(18) *Patient access and feedback.* A licensee who uses telemedicine shall ensure that the patient has easy access to a mechanism for the following purposes:

- a.* To access, supplement and amend patient-provided personal health information;

- b. To provide feedback regarding the quality of the telemedicine services provided; and
- c. To register complaints. The mechanism shall include information regarding the filing of complaints with the board.

13.11(19) *Financial interests.* Advertising or promotion of goods or products from which the licensee(s) receives direct remuneration, benefit or incentives (other than the fees for the medical services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee(s) should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited. Licensees shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy.

13.11(20) *Circumstances where the standard of care may not require a licensee to personally interview or examine a patient.* Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a licensee may treat a patient who has not been personally interviewed, examined and diagnosed by the licensee:

- a. Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;
- b. For institutional settings, including writing initial admission orders for a newly hospitalized patient;
- c. Call situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- d. Cross-coverage situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- e. Situations in which the patient has been examined in person by an advanced registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;
- f. Emergency situations in which the life or health of the patient is in imminent danger;
- g. Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- h. Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention; and
- i. For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities and hospice settings.

13.11(21) *Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation—prohibited.* Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in subrule 13.11(20).

13.11(22) *Medical abortion.* Nothing in this rule shall be interpreted to contradict or supersede the requirements established in rule 653—13.10(147,148,272C).

This rule is intended to implement Iowa Code chapters 147, 148 and 272C.
[ARC 1983C, IAB 4/29/15, effective 6/3/15]

653—13.12(135,147,148,272C,280) Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility.

13.12(1) Definitions. For purposes of this rule:

“Authorized facility” means any nonpublic school which is accredited pursuant to Iowa Code section 256.11, any school directly supported in whole or in part by taxation, a food establishment as defined in Iowa Code section 137F.1, a carnival as defined in Iowa Code section 88A.1, a recreational camp, a youth sports facility, or a sports area.

“Epinephrine auto-injector” means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

“Physician” means a person licensed pursuant to Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

13.12(2) Notwithstanding any other provision of law to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A.

13.12(3) A physician who prescribes epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A, provided the physician has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[ARC 2387C, IAB 2/3/16, effective 3/9/16]

653—13.13(144E,147,148,272C) Standards of practice—experimental treatments for patients with a terminal illness.

13.13(1) *Exemption from discipline.* To the extent consistent with state law, the board shall not revoke, fail to renew, suspend, or take any action against a physician’s license based solely on the physician’s recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

13.13(2) *Eligible patient.* A physician shall ensure that a patient meets all of the following conditions prior to the use of an investigational drug, biological product, or device pursuant to this rule:

- a. The patient has a terminal illness, attested to by the patient’s treating physician.
- b. The patient has considered and rejected or has tried and failed to respond to all other treatment options approved by the U.S. Food and Drug Administration (FDA).
- c. The patient has received a recommendation from the patient’s physician for an investigational drug, biological product, or device.
- d. The patient has given written informed consent for the use of the investigational drug, biological product, or device.
- e. The patient has documentation from the patient’s physician that the patient meets the requirements of this rule.

13.13(3) *Investigational drug, biological product, or device.* A physician may recommend access to or treatment with an investigational drug, biological product, or device that has successfully completed phase 1 of an FDA-approved clinical trial but has not yet been approved for general use by the FDA and remains under investigation in an FDA-approved clinical trial.

13.13(4) *Terminal illness.* A physician shall ensure that a patient has a terminal illness prior to the use of an investigational drug, biological product, or device pursuant to this rule. A terminal illness is a progressive disease or medical or surgical condition that entails significant functional impairment and that is not considered by a treating physician to be reversible even with administration of treatments approved by the FDA and that, without life-sustaining procedures, will result in death.

13.13(5) *Written informed consent.* A physician shall obtain written informed consent prior to the use of an investigational drug, biological product, or device pursuant to this rule. Written informed consent is a written document that is signed by a patient, a parent of a minor patient, or a legal guardian or other legal representative of the patient and attested to by the patient’s treating physician and a witness and that includes all of the following:

- a. An explanation of the products and treatments approved by the FDA for the disease or condition from which the patient suffers.
- b. An attestation that the patient concurs with the patient’s treating physician in believing that all products and treatments approved by the FDA are unlikely to prolong the patient’s life.

c. Clear identification of the specific proposed investigational drug, biological product, or device that the patient is seeking to use.

d. A description of the best and worst potential outcomes of using the investigational drug, biological product, or device and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by use of the proposed investigational drug, biological product, or device. The description shall be based on the treating physician's knowledge of the proposed investigational drug, biological product, or device in conjunction with an awareness of the patient's condition.

e. A statement that the patient's health plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device, unless the patient's health plan or third-party administrator and provider are specifically required to do so by law or contract.

f. A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the investigational drug, biological product, or device and that hospice care may be reinstated if treatment ends and the patient meets hospice eligibility requirements.

g. A statement that the patient understands that the patient is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that this liability extends to the patient's estate unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

13.13(6) *Assisting suicide.* This rule shall not be construed to allow a patient's treating physician to assist the patient in committing or attempting to commit suicide as prohibited in Iowa Code section 707A.2.

13.13(7) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of rule 653—13.13(144E,147,148,272C) or 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician recommends access to or treatment with an investigational drug, biological product, or device to an individual who is not an eligible patient pursuant to this rule.

b. The physician fails to obtain appropriate written informed consent prior to recommending access to or treatment with an investigational drug, biological product, or device pursuant to this rule.

c. The physician assists the patient in committing or attempting to commit suicide as prohibited in Iowa Code section 707A.2.

This rule is intended to implement Iowa Code chapters 144E, 147, 148 and 272C.
[ARC 3588C, IAB 1/17/18, effective 2/21/18]

653—13.14(147,148,272C) Standards of practice—tick-borne disease diagnosis and treatment.

13.14(1) *Exemption from discipline.* A person licensed by the board under Iowa Code chapter 148 shall not be subject to discipline under this chapter or the board's enabling statute based solely on the physician's recommendation or provision of a treatment method for Lyme disease or other tick-borne disease if the recommendation or provision of such treatment meets all the following criteria:

a. The treatment is provided after an examination is performed and informed consent is received from the patient.

b. The physician identifies a medical reason for recommending or providing the treatment.

c. The treatment is provided after the physician informs the patient about other recognized treatment options and describes to the patient the physician's education, experience, and credentials regarding the treatment of Lyme disease or other tick-borne disease.

d. The physician uses the physician's own medical judgment based on a thorough review of all available clinical information and Lyme disease or other tick-borne disease literature to determine the best course of treatment for the individual patient.

e. The treatment will not, in the opinion of the physician, result in the direct and proximate death of or serious bodily injury to the patient.

13.14(2) *Lyme disease.* According to the Centers for Disease Control and Prevention (CDC), Lyme disease is caused by the bacterium *Borrelia burgdorferi* and is transmitted to humans through the bite of

infected blacklegged ticks, commonly known as deer ticks. Typical symptoms include fever, headache, fatigue, and a characteristic skin rash called erythema migrans. If left untreated, infection can spread to joints, the heart, and the nervous system. Lyme disease is diagnosed based on symptoms, physical findings (e.g., a rash), and the possibility of exposure to infected ticks. Laboratory testing is helpful if used correctly and performed with validated methods. Steps to prevent Lyme disease include using insect repellent, removing ticks promptly, applying pesticides, and reducing tick habitat. The ticks that transmit Lyme disease can occasionally transmit other tick-borne diseases as well.

13.14(3) Lyme disease treatment. Most cases of Lyme disease can be treated successfully with a few weeks of antibiotics. Over the past several years, the International Lyme and Associated Diseases Society (ILADS) has supported longer courses of antibiotics for some patients, versus the prescribed treatment durations identified by the Infectious Diseases Society of America (IDSA) and referenced by the CDC. While IDSA has expressed concern about overtreatment, ILADS points out that treatment decisions should be based on a risk-benefit analysis. Both groups have published evidence-based guidelines.

13.14(4) Tick-borne diseases. According to the CDC, tick-borne diseases include:

a. *Anaplasmosis* is transmitted to humans by tick bites primarily from the blacklegged tick (*Ixodes scapularis*) in the northeastern and upper midwestern regions of the United States (U.S.) and the western blacklegged tick (*Ixodes pacificus*) along the Pacific coast.

b. *Babesiosis* is caused by microscopic parasites that infect red blood cells. Most human cases of babesiosis in the U.S. are caused by *Babesia microti*. *Babesia microti* is transmitted by the blacklegged tick (*Ixodes scapularis*) and is found primarily in the northeastern and upper midwestern regions of the U.S.

c. *Borrelia mayonii* infection has recently been described as a cause of illness in the upper midwestern region of the U.S. This infection has been found in blacklegged ticks (*Ixodes scapularis*) in Minnesota and Wisconsin. *Borrelia mayonii* is a new species and is the only species besides *B. burgdorferi* known to cause Lyme disease in North America.

d. *Borrelia miyamotoi* infection has recently been described as a cause of illness in the U.S. This infection is transmitted by the blacklegged tick (*Ixodes scapularis*) and has a geographic range similar to that of Lyme disease.

e. *Bourbon virus* infection has been identified in a limited number of patients in the midwestern and southern regions of the U.S. At this time, it is not known if the virus might be found in other areas of the U.S.

f. *Colorado tick fever* is caused by a virus transmitted by the Rocky Mountain wood tick (*Dermacentor andersoni*). Colorado tick fever occurs in the Rocky Mountain states at elevations of 4,000 to 10,500 feet.

g. *Ehrlichiosis* is transmitted to humans by the lone star tick (*Amblyomma americanum*), found primarily in the south central and eastern regions of the U.S.

h. *Heartland virus* cases have been identified in the midwestern and southern regions of the U.S. Studies suggest that lone star ticks (*Amblyomma americanum*) can transmit the virus. It is unknown if the virus may be found in other areas of the U.S.

i. *Lyme disease* is transmitted by the blacklegged tick (*Ixodes scapularis*) in the northeastern and upper midwestern regions of the U.S. and by the western blacklegged tick (*Ixodes pacificus*) along the Pacific coast.

j. *Powassan disease* is transmitted by the blacklegged tick (*Ixodes scapularis*) and the groundhog tick (*Ixodes cookei*). Cases have been reported primarily from northeastern states and the Great Lakes region.

k. *Rickettsia parkeri rickettsiosis* is transmitted to humans by the Gulf Coast tick (*Amblyomma maculatum*).

l. *Rocky Mountain spotted fever* is transmitted by the American dog tick (*Dermacentor variabilis*), Rocky Mountain wood tick (*Dermacentor andersoni*), and the brown dog tick (*Rhipicephalus sanguineus*) in the U.S. The brown dog tick and other tick species are associated with Rocky Mountain spotted fever in Central America and South America.

m. Southern tick-associated rash illness is transmitted via bites from the lone star tick (*Amblyomma americanum*) found in the southeastern and eastern regions of the U.S.

n. Tick-borne relapsing fever is transmitted to humans through the bite of infected soft ticks. Tick-borne relapsing fever has been reported in 15 states: Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming and is associated with sleeping in rustic cabins and vacation homes.

o. Tularemia is transmitted to humans by the dog tick (*Dermacentor variabilis*), the wood tick (*Dermacentor andersoni*), and the lone star tick (*Amblyomma americanum*). Tularemia occurs throughout the U.S.

p. 364D rickettsiosis (Rickettsia phillipi) is transmitted to humans by the Pacific Coast tick (*Dermacentor occidentalis*). This is a new disease that has been found in California.

13.14(5) Grounds for discipline. A physician may be subject to disciplinary action for violation of these rules or the rules found in 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician fails to perform and document an appropriate examination or fails to obtain and document appropriate informed consent from the patient.

b. The physician fails to identify and document a medical reason for recommending or providing the treatment.

c. The physician fails to inform the patient about other recognized treatment options or fails to describe to the patient the physician's education, experience, and credentials regarding the treatment of Lyme disease or other tick-borne diseases.

d. The physician fails to use the physician's own medical judgment based on a thorough review of all available clinical information and Lyme disease or other tick-borne disease literature to determine the best course of treatment for the individual patient.

e. The treatment provided, in the opinion of the physician, will likely result in the direct and proximate death of or serious bodily injury to the patient.

This rule is intended to implement Iowa Code chapters 147, 148 and 272C.

[ARC 3589C, IAB 1/17/18, effective 2/21/18]

653—13.15(124E,147,148,272C) Standards of practice—medical cannabidiol.

13.15(1) Definitions. For purposes of this rule:

“*Board of medicine*” means the board established pursuant to Iowa Code chapters 147 and 148.

“*Bordering state*” means the same as defined in Iowa Code section 331.910.

“*Debilitating medical condition*” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.
10. Ulcerative colitis.
11. Severe, intractable pediatric autism with self-injurious or aggressive behaviors.

“Department” means the Iowa department of public health.

“Form and quantity” means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

“Medical cannabidiol” means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and adopted by the department pursuant to rule.

“Medical cannabidiol board” means the board established pursuant to Iowa Code section 124E.5.

“Primary caregiver” means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient’s health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of this chapter.

“Untreatable pain” means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.

“Written certification” means a document signed by a physician licensed pursuant to Iowa Code chapter 148 with whom the patient has established a patient-physician relationship and who is the patient’s primary care provider which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

13.15(2) *Written certification.* A physician who is a patient’s primary care provider may provide the patient a written certification of diagnosis if, after examining and treating the patient, the physician determines, in the physician’s medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

a. The physician shall provide explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

b. Subsequently, the physician shall do the following:

(1) Determine, on an annual basis, if the patient continues to suffer from a debilitating medical condition and, if so, may issue the patient a new written certification of that diagnosis.

(2) Otherwise comply with all requirements established by the department pursuant to rule.

c. A physician may provide, but has no duty to provide, a written certification pursuant to this rule.

13.15(3) *Adding or removing debilitating medical conditions and amending form and quantity of medical cannabidiol.* Recommendations made by the medical cannabidiol board pursuant to Iowa Code section 124E.5 relating to the addition or removal of allowable debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial or to the amendment of the form and quantity of allowable medical uses of cannabidiol shall be made to the board of medicine for consideration. The medical cannabidiol board shall submit a written recommendation, a copy of the petition and all other information received during consideration of the petition. The board of medicine shall consider the information received from the medical cannabidiol board and may seek information from other sources if it is deemed relevant by the board of medicine. The decision regarding a recommendation by the medical cannabidiol board is at the sole discretion of the board of medicine. The board of medicine shall make its decision within 180 days of receipt of the recommendation from the medical cannabidiol board. If the recommendation is approved by the board of medicine, it shall be adopted by rule.

13.15(4) *Financial interests.* A physician shall not share office space with, accept referrals from, or have any financial relationship with a medical cannabidiol manufacturer or dispensary.

13.15(5) *Criminal prosecution.* A physician, including any authorized agent or employee thereof, shall not be subject to prosecution for the unlawful certification, possession, or administration of marijuana under the laws of this state for activities arising directly out of or directly related to the

certification or use of medical cannabidiol in the treatment of a patient diagnosed with a debilitating medical condition as authorized by Iowa Code chapter 124E.

13.15(6) *Civil or disciplinary penalties.* A physician, including any authorized agent or employee thereof, shall not be subject to any civil or disciplinary penalties by the board of medicine or any business, occupational, or professional licensing board or entity, solely for activities conducted relating to a patient's possession or use of medical cannabidiol as authorized by Iowa Code chapter 124E. Nothing in this rule prevents the board of medicine from taking action in response to violations of any other sections of law or rule.

13.15(7) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of these rules or the rules found in 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician provides an individual a written certification without establishing a patient-physician relationship, including examining and treating the individual, or without being the individual's primary care provider.

b. The physician provides a patient a written certification without determining, in the physician's medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

c. The physician provides a patient a written certification without providing explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

d. The physician provides an individual a new written certification without determining, on an annual basis, that the patient continues to suffer from a debilitating medical condition.

e. The physician shares office space with, accepts referrals from, or has a financial relationship with a medical cannabidiol manufacturer or dispensary.

This rule is intended to implement Iowa Code chapters 124E, 147, 148 and 272C.

[ARC 3830C, IAB 6/6/18, effective 7/11/18; ARC 4248C, IAB 1/16/19, effective 2/20/19; ARC 4377C, IAB 3/27/19, effective 5/1/19]

653—13.16 to 13.19 Reserved.

653—13.20(147,148) Principles of medical ethics. The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery and osteopathic medicine and surgery in this state.

13.20(1) *Conflict of interest.* A physician should not provide medical services under terms or conditions which tend to interfere with or impair the free and complete exercise of the physician's medical judgment and skill or tend to cause a deterioration of the quality of medical care.

13.20(2) *Fees.* Any fee charged by a physician shall be reasonable.

653—13.21(17A,147,148,272C) Waiver or variance prohibited. Rules in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

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¹ Effective date of 13.2(148,272C) delayed 70 days by the Administrative Rules Review Committee at its meeting held May 14, 1996.

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

875—71.1(89A) Definitions. The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

“Acceptance checklist” means a checklist available on the website of the division of labor services that includes a list of major systems and components of conveyances.

“AECO” means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

“Approved” means approved by the division.

“CCD” means code compliance documentation as described in ASME A17.7, Section 2.10.

“CEI” means a person who is a certified elevator inspector or certified elevator inspector supervisor and who received the certification from a certifying organization that holds a valid document of accreditation issued by an accreditation body in accordance with ANSI/ISO/IEC 17024.

“Center of the elevator path” means a vertical line through the center point of an elevator car top beginning 2 feet below the lower landing and ending 10 feet above the highest landing of an elevator.

“Control” means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

“Conveyance” means any elevator, escalator, material lift elevator installed on or after August 10, 2016, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

“CPH” means a construction personnel hoist.

“CPH jump” means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

“Division” means the labor services division of the workforce development department.

“Elevator” means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. “Elevator” does not include a CPH.

“Elevator mechanic” means a person who meets the standard for “elevator personnel” found in ASME A17.1.

“Hoistway-unit system” means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

“Wind tower lift” means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10; ARC 0168C, IAB 6/13/12, effective 7/18/12; ARC 0685C, IAB 4/17/13, effective 5/22/13; ARC 1159C, IAB 10/30/13, effective 12/4/13; ARC 2603C, IAB 7/6/16, effective 8/10/16; ARC 4212C, IAB 1/2/19, effective 3/1/19]

875—71.2(89A) Registration of conveyances. The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.3(89A) State identification number. The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.4(89A) Responsibility for obtaining permits. The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner,

result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.5(89A) Installation permits.

71.5(1) Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

71.5(2) Application for an installation permit shall be accompanied by the fee specified in rule 875—71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

- a. Sectional plan of car and hoistway.
- b. Sectional plan of machine room.
- c. Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.
- d. Size and weight of rails and guide rail bracket spacing.
- e. The estimated maximum vertical forces on the guide rails on application of the safety device.
- f. In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.
- g. The size and weight per foot of any rail reinforcements where rail reinforcements are provided.
- h. Job specifications.
- i. For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.
- j. For a CPH, the number of CPH jumps planned, the planned dates for each CPH jump, and the change in the number of floors anticipated with each CPH jump.

71.5(3) A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH jump. Each CPH jump shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

71.5(4) Issuance of an installation permit shall not be construed as a waiver or variance of any requirement of law.

71.5(5) The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

71.5(6) Except as described in paragraphs 71.5(6) “a” and “b,” the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

- a. For a CPH, the installation permit shall expire upon completion of the last CPH jump.
- b. For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

875—71.6(89A) Construction permits. A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

71.6(1) Use of the elevator shall not begin until a construction permit has been issued by the division.

71.6(2) Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

71.6(3) Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

a. The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

b. The applicable requirements of ASME A17.1, Section 5.10, are met.

71.6(4) The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

71.6(5) The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

71.6(6) Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

71.6(7) Failure to comply with these provisions may result in the revocation of the construction permit.

71.6(8) An operating permit shall not be issued before construction and an acceptance inspection are complete.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.7(89A) Operating permits.

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A), 875—71.8(89A), and 875—71.20(89A). If operation of a conveyance is prohibited under this rule, the labor commissioner may post notice on the conveyance that it is not to be used. The conveyance may be returned to service only after an operating permit for the conveyance has been issued or reissued.

71.7(2) Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 875—71.11(89A) and payment of all permit and inspection fees owed to the division.

71.7(3) Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

a. The operating permit for an elevator or CPH shall be posted in the car.

b. The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

71.7(4) An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

71.7(5) An operating permit is automatically suspended when an alteration begins. The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 875—71.11(89A).

71.7(6) An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

71.7(7) Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 0318C, IAB 9/5/12, effective 10/10/12; ARC 0574C, IAB 2/6/13, effective 3/13/13; ARC 0685C, IAB 4/17/13, effective 5/22/13]

875—71.8(89A) Controller upgrade permits. A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 875—71.11(89A) prior to being placed back into service.

71.8(1) A controller upgrade permit shall not be issued unless each of the following conditions is met:

a. Two or more elevators share a lobby at the level of the recall floor.

b. The project includes the installation of new elevator controllers in all of the elevators in the group.

c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.

d. There is a current alteration permit for the project.

e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

71.8(2) A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

71.8(3) Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.9(89A) Alteration permits.

71.9(1) Alteration shall not begin until an alteration permit has been issued by the division.

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

71.9(3) Issuance of an alteration permit shall not be construed as a waiver or variance of any requirement of law.

71.9(4) The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

71.9(5) If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH jump shall be provided to the labor commissioner.

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or one year after issuance. However, during the tenth month after issuance and upon submission to the labor commissioner of the fee set forth in this chapter, sufficient justification, and other required information, the labor commissioner may grant an extension of the alteration permit.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10; ARC 0685C, IAB 4/17/13, effective 5/22/13; ARC 2333C, IAB 1/6/16, effective 2/10/16]

875—71.10(89A) Alterations.

71.10(1) Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable.

71.10(2) A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

71.10(3) Alterations of conveyances other than escalators and elevators shall require that the entire conveyance be brought into compliance with the current code.

71.10(4) Work required by ASME A17.3 (2011) qualifies as normal maintenance and does not require an alteration permit except for work performed to comply with ASME A17.3 (2011) 2.3.3, 3.4.4.1(a), 3.4.4.2, 3.5.3, 3.5.5(a) and (b), 3.5.7, 3.6.1, 3.6.2, 3.8.1(a), 3.8.3(a), 3.10.1, 3.10.4(b) through (g), 3.10.4(i) through (k), 3.10.4(m), 3.10.4(r), 3.10.4(w), 3.10.7, 3.10.9, 3.10.10, 4.4.2, 4.4.3, and 4.7.3. [ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 0168C, IAB 6/13/12, effective 7/18/12; ARC 0685C, IAB 4/17/13, effective 5/22/13; ARC 2396C, IAB 2/17/16, effective 3/23/16; ARC 4376C, IAB 3/27/19, effective 5/1/19]

875—71.11(89A) Inspections. Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

71.11(1) Scope of inspections.

a. *Comprehensive.* Periodic inspections shall be comprehensive. Elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

b. Limited. The scope of an inspection after an alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

71.11(2) *When inspections will occur.* When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

a. Periodic inspections.

(1) Each construction elevator and CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of construction elevators and CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

(3) The inspector shall arrange to perform the periodic inspection of a broadcast tower elevator when the maintenance company is on site to perform the periodic tests. If the inspection is to be performed by employees of the commissioner, the inspection shall occur during the division's normal business hours, unless otherwise agreed to by the commissioner pursuant to subrule 71.16(11).

b. Acceptance inspections. A CPH shall be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an acceptance inspection shall occur:

(1) After each relocation,

(2) After each alteration,

(3) For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company,

(4) Before an elevator subject to a construction permit receives an operating permit, and

(5) Before a previously dormant conveyance is returned to service.

c. Other inspections. Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

71.11(3) *Who may perform inspections.*

a. The labor commissioner's designee shall inspect altered conveyances, construction elevators, CPHs, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances.

b. Except as noted in 71.11(3) "c," annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 875—71.12(89A).

c. An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

71.11(4) *Inspection standards.* Inspections shall be performed in accordance with applicable safety codes or documents such as:

a. CCD;

b. ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

c. ANSI A10.4-2007; or

d. ASME A18.1.

71.11(5) *Inspection reports.*

a. All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

b. The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

71.11(6) *Extension of time.* The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

71.11(7) *Correction of unsafe conditions.* In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 875—71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

a. Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

- (1) Identify the equipment.
- (2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.
- (3) Set forth the consequences of failure to comply.

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

c. The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

d. If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may contact the special inspector, send a second abatement order to the owner, or send a state inspector to inspect the conveyance. Copies of the abatement order and the inspection report shall be attached to a second abatement order.

f. If an inspection as described in paragraph 71.11(7) “*d*” or “*e*” reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

g. Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant

to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

71.11(9) *Interference prohibited.* No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

71.11(10) *Escalator inspections.* The owner shall arrange for an escalator mechanic to be on site to assist with the inspection. The inspector shall work with the owner to arrange an inspection time.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10; ARC 0168C, IAB 6/13/12, effective 7/18/12; ARC 0685C, IAB 4/17/13, effective 5/22/13; ARC 1971C, IAB 4/29/15, effective 6/3/15; ARC 2607C, IAB 7/6/16, effective 8/10/16; ARC 3742C, IAB 4/11/18, effective 5/16/18; ARC 3856C, IAB 6/20/18, effective 8/1/18]

875—71.12(89A,252J,261,272D) Special inspector commissions.

71.12(1) *Definition.* As used in this rule, “certificate of noncompliance” means:

a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

b. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

c. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

71.12(2) *Qualifications.*

a. Each applicant must possess a high school diploma or general equivalency degree.

b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

c. Each applicant shall be a CEI.

d. Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

e. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than \$1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than \$5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than \$100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector’s employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

71.12(3) *Application.* An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

71.12(4) *Expiration.* The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

71.12(5) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

71.12(6) *Denials.* The labor commissioner may refuse to issue or renew a special inspector’s commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

71.12(7) *Investigations.* The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

71.12(8) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

71.12(9) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector’s authority;

- c. The special inspector misrepresented self as a state inspector or a state employee;
- d. The special inspector used commission authority for inappropriate personal gain;
- e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f. The special inspector committed numerous violations as described in subrule 71.12(8);
- g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h. The special inspector is no longer a CEI;
- i. The division received a certificate of noncompliance; or
- j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9) "a" to "h."

71.12(10) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a. The special inspector filed a misleading, false or fraudulent report;
- b. The special inspector failed to perform a required inspection;
- c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d. The special inspector committed repeated violations as described in subrule 71.12(9);
- e. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- f. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10) "a" to "e";
- g. The special inspector is no longer a CEI; or
- h. The division received a certificate of noncompliance.

71.12(11) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. *Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. *Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. *Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

h. *Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

i. *Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.

[ARC 7841B, IAB 6/17/09, effective 7/22/09]

875—71.13(89A) State employees. Rescinded **ARC 1971C**, IAB 4/29/15, effective 6/3/15.

875—71.14(89A) Safety tests. Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule. The alternative test methods set forth at ASME A17.1, Rule 8.6.11.10, shall not be allowed as a substitute for a full-load safety test.

71.14(1) *When safety tests will be performed.*

a. Safety tests shall be performed on new and altered installations before they are placed in service.
b. Category 1 safety tests of wind turbine tower elevators shall be conducted after two years of operation, and category 5 safety tests of wind turbine tower elevators shall be performed after ten years of operation. Safety tests shall be made on all other conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) The columns pertaining to “periodic tests” in Table N-1 in the edition of ASME A17.1 currently adopted for new conveyances at rule 875—72.1(89A);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

71.14(2) *How safety tests will be reported.* Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

71.14(3) *How safety tests will be recorded.* The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic’s name, and the type of test performed.

a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.

b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.

c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.

d. On other conveyances covered by these rules, the commissioner’s designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 1766C**, IAB 12/10/14, effective 1/14/15; **ARC 3742C**, IAB 4/11/18, effective 5/16/18]

875—71.15(89A) Authorized companies.

71.15(1) Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

71.15(2) For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

71.15(3) To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(4) Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(5) Investigations. Investigations shall take place at the times and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

71.15(6) Suspension. If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

71.15(7) Suspension procedures.

a. The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

b. The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

c. If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.16(89A) Fees. Except as noted in this rule, all fees are nonrefundable and due in advance.

71.16(1) Operating permits. The annual operating permit fee shall be \$75 per conveyance.

71.16(2) Periodic inspections. Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

- a. Construction elevator: \$200.
- b. Wind tower lift: \$225.
- c. Hand-powered elevator: \$90.
- d. Television tower elevator: \$500.
- e. Handicapped restricted use elevator: \$100.
- f. Other hydraulic elevator: \$100.
- g. Other traction elevator: \$150.
- h. Escalator: \$150.
- i. Dumbwaiter: \$90.
- j. Wheelchair lift: \$90.
- k. CPH.
- (1) Annual: \$500.
- (2) Quarterly: \$200.
- l. Moving walk: \$150.

71.16(3) Installation permits. The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of \$100. The fees for new installations shall be as follows:

- a. Wind tower lift: \$500.
- b. Material lift elevators: \$500.
- c. Other hydraulic elevators: \$750.
- d. Other traction elevators: \$1000.
- e. Escalator: \$1000.
- f. Dumbwaiter: \$500.
- g. Wheelchair lift: \$500.
- h. CPH: \$500.
- i. Moving walk: \$500.

71.16(4) Alteration permits.

a. Except as set forth below, the fee for any elevator alteration permit shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.

b. The fee for each CPH extension shall be \$150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

c. The fee for an alteration permit shall be \$500 if the only alteration is the addition or replacement of an escalator skirt brush.

d. The fee for an initial print review, elevator alteration permit, and initial inspection shall be \$250 if both of the following conditions are met:

(1) The only changes covered by the elevator alteration permit application are required by ASME A17.3 (2011) as adopted in 875—Chapters 72 and 73; and

(2) The elevator alteration permit application is submitted before or no later than 120 days after the issuance of an inspection report describing ASME A17.3 requirements.

e. For all other conveyances, the fees for new installations shall apply to alterations.

71.16(5) Construction permits. The construction permit fee shall be \$200 per conveyance. This fee includes the fee for initial inspection.

71.16(6) Controller upgrade permits. The controller upgrade permit fee shall be \$250. This fee includes one inspection.

71.16(7) Consultative inspections. Consultative inspections may be performed at the discretion of the labor commissioner for \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(8) Special inspector commission. The special inspector commission fee shall be \$60 annually.

71.16(9) Witness of safety tests. The fee for division employees to witness safety tests shall be \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(10) Permit extensions. The fee to extend an installation permit, alteration permit, or construction permit shall be \$100.

71.16(11) Inspections outside of normal business hours. Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of \$200 per hour, including travel time, with a minimum charge of \$400.

71.16(12) Reinspections. The fees for reinspections are \$400 for television tower elevators and CPHs, \$200 for wind tower lifts, and \$300 for all other conveyances.

71.16(13) Inspection for temporary removal from service. The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(14) Fee waiver.

a. When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

b. The fee for an alteration permit shall be waived by the commissioner if the only alterations covered by the permit application are required by rule 875—72.26(89A) or 875—73.27(89A). The fee waiver set forth in this paragraph does not eliminate the requirement to pay for an acceptance inspection or for an operating permit.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10; ARC 0318C, IAB 9/5/12, effective 10/10/12; ARC 0685C, IAB 4/17/13, effective 5/22/13; ARC 1158C, IAB 10/30/13, effective 12/4/13; ARC 1972C, IAB 4/29/15, effective 6/3/15; ARC 1971C, IAB 4/29/15, effective 6/3/15; ARC 2603C, IAB 7/6/16, effective 8/10/16; ARC 4376C, IAB 3/27/19, effective 5/1/19]

875—71.17(89A) Publications available for review. Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, waiver, or variance from any otherwise applicable regulation or statute.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

875—71.19(89A) Accidents and injuries.

71.19(1) This rule applies to a conveyance in the event one of the following occurs:

- a. A personal injury accident that requires the service of a physician;
- b. A personal injury accident that causes disability exceeding one day; or
- c. Damage that will require more than one hour of mechanic's time (excluding travel) to repair.

71.19(2) The owner shall promptly notify the commissioner if one of the events listed in subrule 71.19(1) occurs. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

71.19(3) The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission is granted by the commissioner.

71.19(4) When an accident or injury involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been inspected and approved by the commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 3856C, IAB 6/20/18, effective 8/1/18]

875—71.20(89A) Temporary removal from service. The requirements for an annual inspection, annual inspection fee, safety test, operating permit, and operating permit fee shall be temporarily suspended for up to three years for an elevator in an unoccupied building if the requirements of this rule are met.

71.20(1) All elevator doors in unoccupied buildings shall be closed and locked. Hydraulic elevators shall be parked at the bottom of the hoistway. Traction elevators shall be parked at the top of the hoistway.

71.20(2) Upon request by the owner of an elevator in an unoccupied building, the labor commissioner shall send an inspector who is a state employee to confirm that the building is unoccupied and that the car and doors of the elevator have been properly secured. If the conditions set forth in subrule 71.20(1) are met, the inspector shall apply to the elevator a seal and a red tag marked with the words "Do Not Operate."

71.20(3) One year after the inspection, the owner must file with the labor commissioner written confirmation that the status of the elevator and building have not changed, and the owner must file again two years after the inspection. Failure to comply with this requirement shall result in termination of the temporary suspension of the requirements for safety tests, inspections, and operating permits.

71.20(4) Prior to returning the elevator to service, and upon request of the owner, the labor commissioner may allow the elevator to be operated for 30 days for the sole purpose of performing safety tests and maintenance.

71.20(5) The owner must notify the labor commissioner at least two weeks before placing an elevator back into service and must arrange for an inspector who is a state employee to witness a safety test.

71.20(6) If at the end of three years the building is still unoccupied, suspension of the requirements for safety tests, inspections, and operating permits shall end without possibility of renewal.

[ARC 0318C, IAB 9/5/12, effective 10/10/12]

These rules are intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

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